

ATTACHMENT 9

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THIS DOCUMENT APPLIES TO:)
ALL ACTIONS)
_____)

Reported by:
DENISE BARDSLEY
CSR No. 11241

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<p style="text-align: right;">156</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA 3 _____ 4) 4 IN RE: PROCESSED EGG) PRODUCTS ANTITRUST) 5 LITIGATION) _____)MDL No. 2002 6)08-MD-0200 THIS DOCUMENT APPLIES TO:) 7 ALL ACTIONS) _____)) 8 9 10 11 12 Videotaped deposition of DONALD L. BELL, 13 Volume II, taken on behalf of The Direct Purchaser 14 Plaintiffs, at 3500 Market Street, Riverside, 15 California, beginning at 10:09 a.m. and ending at 16 3:53 p.m. on Wednesday, August 21, 2013, before 17 DENISE BARDSLEY, Certified Shorthand Reporter 18 No. 11241. 19 20 21 22 23 24 25</p>	<p style="text-align: right;">158</p> <p>1 APPEARANCES (continued): 2 3 For The Indirect Purchaser Plaintiffs: 4 MILBERG LLP 5 One Pennsylvania Plaza 6 New York, New York 10119 7 (646) 733-5727 8 (No appearance.) 9 10 For Indirect Purchaser Plaintiffs 11 LOVELL STEWART HALEBIAN & JACOBSON LLP 12 BY: MERRICK SCOTT RAYLE 13 Attorney at Law 14 61 Broadway, Suite 501 15 New York, New York 10006 16 (212) 608-1900 17 msrayle@sbcglobal.net 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">157</p> <p>1 APPEARANCES: 2 3 For The Direct Purchaser Plaintiffs: 4 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP 5 BY: STEIG D. OLSON 6 Attorney at Law 7 51 Madison Avenue, 22nd Floor 8 New York, New York 10010 9 (212) 849-7152 10 steigolson@quinnemanuel.com 11 12 For The Direct Purchaser Plaintiffs: 13 HAUSFELD, LLP 14 BY: JAMES J. PIZZIRUSSO 15 Attorney at Law 16 1604 Locust Street, 2nd Floor 17 Philadelphia, Pennsylvania 19103 18 (215) 985-3270 19 jpizzirusso@hausfeldllp.com 20 21 22 23 24 25</p>	<p style="text-align: right;">159</p> <p>1 APPEARANCES (continued): 2 3 For the Deponent: 4 UNIVERSITY OF CALIFORNIA 5 BY: MICHAEL R. GOLDSTEIN 6 Attorney at Law 7 1111 Franklin Street, 8th Floor 8 Oakland, California 94607 9 (510) 987-9895 10 michael.goldstein@ucop.edu 11 12 For Midwest Poultry Services: 13 FAEGRE BAKER DANIELS 14 BY: KATHY L. OSBORN 15 Attorney at Law 16 300 North Meridian Street, Suite 2700 17 Indianapolis, Indiana 46204-1750 18 (317) 237-1144 19 kathy.osborn@faegrebd.com 20 (Telephonic appearance.) 21 22 23 24 25</p>

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<p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 For Giant Eagle, Inc.:</p> <p>4 MARCUS & SHAPIRA LLP</p> <p>5 One Oxford Center, 35th Floor</p> <p>6 Pittsburgh, Pennsylvania 15219</p> <p>7 (412) 338-3344</p> <p>8 (No appearance.)</p> <p>9</p> <p>10 For Cal-Maine Foods, Inc.:</p> <p>11 GIBSON, DUNN & CRUTCHER LLP</p> <p>12 2100 McKinney Avenue</p> <p>13 Dallas, Texas 75201-6912</p> <p>14 (214) 698-3279</p> <p>15 (No appearance.)</p> <p>16</p> <p>17 For Sparboe Farms, Inc.:</p> <p>18 BRIGGS AND MORGAN</p> <p>19 2200 IDS Center</p> <p>20 80 South 8th Street</p> <p>21 Minneapolis, Minnesota 55402</p> <p>22 (612) 977-8415</p> <p>23 (No appearance.)</p> <p>24</p> <p>25</p>	<p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 For Hillandale Farms, Inc., Hillandale Farms East,</p> <p>4 Inc., Hillandale Gettysburg LP and Hillandale Farms</p> <p>5 of Pa., Inc.:</p> <p>6 BUCHANAN, INGERSOLL & ROONEY</p> <p>7 Two Liberty Place</p> <p>8 50 South 16th Street, Suite 3200</p> <p>9 Philadelphia, Pennsylvania 19102</p> <p>10 (215) 665-3884</p> <p>11 (No appearance.)</p> <p>12</p> <p>13 For the Direct Action Plaintiffs:</p> <p>14 JENNER & BLOCK</p> <p>15 BY: STEPHEN R. BROWN</p> <p>16 BY: RICHARD CAMPBELL (Telephonic appearance)</p> <p>17 Attorneys at Law</p> <p>18 353 North Clark Street, Suite 4500</p> <p>19 Chicago, Illinois (312) 840-7282</p> <p>20 (312) 840-7282</p> <p>21 stephenbrown@jenner.com</p> <p>22 richardcampbell@jenner.com</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">164</p> <p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 For Defendant Michael Foods:</p> <p>4 WEIL, GOTSHAL & MANGES LLP</p> <p>5 1300 Eye Street N.W., Suite 900</p> <p>6 Washington, D.C. 20005</p> <p>7 (202) 682-7231</p> <p>8 (No appearance.)</p> <p>9</p> <p>10 For Weaver Brothers:</p> <p>11 DISNMORE & SHOHL LLP</p> <p>12 1100 Courthouse Plaza SW</p> <p>13 10 North Ludlow Street</p> <p>14 Dayton, Ohio 45402</p> <p>15 (937) 463-4928</p> <p>16 (No appearance.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">166</p> <p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 For Michael Foods:</p> <p>4 LEONARD, STREET & DEINARD</p> <p>5 BY: PETER J. SCHWINGLER</p> <p>6 Attorney at Law</p> <p>7 150 South Fifth Street, Suite 2300</p> <p>8 Minneapolis, Minnesota 55402</p> <p>9 612 335-7023</p> <p>10 peterschwingler@leonard.com</p> <p>11 (Telephonic appearance.)</p> <p>12</p> <p>13 For Ohio Fresh Eggs:</p> <p>14 KEATING MUETHING & KLEKAMP PLL</p> <p>15 BY: BRYCE YODER</p> <p>16 Attorney at Law</p> <p>17 One East Fourth Street, Suite 1400</p> <p>18 Cincinnati, Ohio 45202-3752</p> <p>19 (513) 579-6400</p> <p>20 jcallow@kmmklaw.com</p> <p>21 (Telephonic appearance.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">165</p> <p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 For Moark LLC and Norco Ranch, Inc.</p> <p>4 EIMER STAHL, LLP</p> <p>5 BY: TRAVIS KENNEDY</p> <p>6 Attorney at Law</p> <p>7 224 South Michigan Avenue, Suite 1300</p> <p>8 Chicago, Illinois 60604</p> <p>9 (312) 660-7604</p> <p>10 tkennedy@eimerstahl.com</p> <p>11 (Telephonic appearance.)</p> <p>12</p> <p>13 For Winn-Dixie, Inc., Roundy's Supermarkets, Inc.,</p> <p>14 C&S Wholesaler Grocers, Inc., and H.J. Heinz</p> <p>15 Company, L.P.:</p> <p>16 BAKER & McKENZIE LLP</p> <p>17 300 East Randolph Street</p> <p>18 Chicago, Illinois 60601</p> <p>19 (312) 861-3735</p> <p>20 (No appearance.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">167</p> <p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 Videographer:</p> <p>4 SCOTT SLATER, VERITEXT</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1 Riverside, California, Wednesday, August 21, 2013</p> <p>2 10:09 a.m.</p> <p>3</p> <p>4 THE VIDEOGRAPHER: Good morning.</p> <p>5 We are on the record at approximately 10:09</p> <p>6 a.m. on August 21st, 2013.</p> <p>7 This is the video-recorded deposition of</p> <p>8 Don Bell, Volume II. My name is Stan Beverly, here</p> <p>9 with our court reporter, Denise Bardsley. We're</p> <p>10 here from Veritext National Deposition and</p> <p>11 Litigation Services at the request of counsel for</p> <p>12 the Direct Purchaser Plaintiffs.</p> <p>13 This deposition is being held at 3500</p> <p>14 Market Street in the city of Riverside. The caption</p> <p>15 of this case is In Re: Processed Egg Products</p> <p>16 Antitrust Litigation, Case No. 200208-MB-200.</p> <p>17 Please note that audio and video recording</p> <p>18 will take place unless all parties agree to go off</p> <p>19 the record. Microphones are sensitive and may pick</p> <p>20 up whispers, private conversations and cellular</p> <p>21 interference.</p> <p>22 I'm not authorized to administer an oath, I</p> <p>23 am not related to any party in this action, nor am I</p> <p>24 financially interested in the outcome in any way.</p> <p>25 May I please have an agreement from all</p>	<p>1 MR. OLSON: Anyone else?</p> <p>2 All right. This is Steig Olson from Quinn</p> <p>3 Emanuel Urquhart & Sullivan for the Direct Purchaser</p> <p>4 Plaintiffs.</p> <p>5 MR. PIZZIRUSSO: James Pizzirusso, Hausfeld</p> <p>6 LLP, Direct Purchaser Plaintiffs.</p> <p>7 MR. BROWN: Stephen Brown from Jenner &</p> <p>8 Block for Direct Action Plaintiff, Kraft, General</p> <p>9 Mills and Nestle.</p> <p>10 MR. RAYLE: Merrick Rayle from Lovell</p> <p>11 Stewart Halebian & Jacobson for the Indirect</p> <p>12 Purchaser Plaintiffs.</p> <p>13 MR. TAKENOUCHI: Jason Takenouchi of</p> <p>14 Kasowitz Benson Torres & Friedman, LLP, for</p> <p>15 Defendant Nu-Cal Foods, Inc.</p> <p>16 MR. GODLSTEIN: Michael Goldstein with the</p> <p>17 Regents of the University of California for the</p> <p>18 witness, Mr. Bell. And with me here today is</p> <p>19 Kristen Erving, our paralegal.</p> <p>20 THE VIDEOGRAPHER: The witness will be</p> <p>21 sworn in and counsel may begin the examination.</p> <p>22 //</p> <p>23 //</p> <p>24</p> <p>25</p>
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<p>1 parties that we can proceed.</p> <p>2 MR. OLSON: Yes.</p> <p>3 MR. GODLSTEIN: Yes.</p> <p>4 MR. RAYLE: Yes.</p> <p>5 THE VIDEOGRAPHER: At this time will</p> <p>6 counsel and all present identify themselves for the</p> <p>7 record.</p> <p>8 MR. OLSON: Let's start on the phone.</p> <p>9 Could the folks on the phone identify themselves.</p> <p>10 MR. CAMPBELL: Richard Campbell, Jenner &</p> <p>11 Block for the Kraft plaintiffs.</p> <p>12 MS. REDDING: Whitney Redding, Pepper</p> <p>13 Hamilton, for United Egg Producers and United States</p> <p>14 Egg Marketers.</p> <p>15 MR. SCHWINGLER: Peter Schwingler, Leonard,</p> <p>16 Street & Deinard, for Michael Foods.</p> <p>17 MS. OSBORN: Kathy Osborn for Midwest</p> <p>18 Poultry, with Faegre Baker Daniels.</p> <p>19 MR. MONICA: John Monica and Kerri Allen</p> <p>20 from Porter, Wright, Morris & Arthur, Rose Acre</p> <p>21 Farms.</p> <p>22 MS. KENNEDY: Travis Kennedy from Eimer</p> <p>23 Stahl, for Moart, LLC, and Norco Ranch, Inc.</p> <p>24 MR. YODER: Bryce Yoder from Keating</p> <p>25 Muething & Klekamp, on behalf of Ohio Fresh Eggs.</p>	<p>1 DONALD L. BELL,</p> <p>2 having been administered an oath, was examined and</p> <p>3 testified as follows:</p> <p>4</p> <p>5 EXAMINATION</p> <p>6 BY MR. OLSON:</p> <p>7 Q Good morning, Mr. Bell.</p> <p>8 A Good morning.</p> <p>9 Q How are you today?</p> <p>10 A Feeling good.</p> <p>11 Q Good. Are you prepared to testify</p> <p>12 truthfully to the best of your knowledge today?</p> <p>13 A Yes.</p> <p>14 Q Okay. And as with yesterday, if at any</p> <p>15 time you need to take a break or do anything to</p> <p>16 refresh yourself, just let us know.</p> <p>17 A Yes.</p> <p>18 (Deposition Exhibit 16 was marked for</p> <p>19 identification by the court reporter</p> <p>20 and is attached hereto.)</p> <p>21 BY MR. OLSON:</p> <p>22 Q Thank you.</p> <p>23 All right. I've handed you what's been</p> <p>24 marked Bell Exhibit 16. This is a document</p> <p>25 Bates-stamped UE0135717 through -135726.</p>

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<p>1 And, Mr. Bell, have you had a chance to</p> <p>2 briefly look at this document?</p> <p>3 A Very briefly, uh-huh.</p> <p>4 Q Okay. Can you identify it as a United</p> <p>5 Voices publication dated July 29, 2002?</p> <p>6 A Yes, I can.</p> <p>7 Q And it attaches a -- what you've referred</p> <p>8 to as a memoranda that you've prepared under the</p> <p>9 sponsorship of UEP; is that right?</p> <p>10 A That's correct. We called it a memo, but</p> <p>11 that's okay.</p> <p>12 Q A memo.</p> <p>13 And the date of this memo is July 16, 2002;</p> <p>14 is that --</p> <p>15 A Yes, sir.</p> <p>16 Q All right. And the title of it is,</p> <p>17 "Several Possible Scenarios Resulting From UEP's New</p> <p>18 Husbandry Guidelines"; is that right?</p> <p>19 A Yes.</p> <p>20 Q And, specifically, it is a discussion of</p> <p>21 what aspect of the husbandry guidelines?</p> <p>22 A The introduction refers to the effects of</p> <p>23 the industry's potential reduction of cage</p> <p>24 densities. That seems to be the foremost --</p> <p>25 Q So, in other words, what you're looking at</p>	<p>1 other words, it would be a transition period under</p> <p>2 which everyone has an opportunity to get their goal.</p> <p>3 It's impossible to get to your goal</p> <p>4 overnight, so it's a -- apparently it's about a</p> <p>5 six-year -- in the table, a six-year period to</p> <p>6 eventually get to your goal.</p> <p>7 Q And you refer, actually, to a seven-year</p> <p>8 period in this discussion?</p> <p>9 A Okay. That's --</p> <p>10 Q Do you see that?</p> <p>11 A Well, I don't see where -- where is that --</p> <p>12 I see that, yes.</p> <p>13 Q Do you see where you write, "the producer's</p> <p>14 committee has advised that such changes shall take</p> <p>15 place over a seven-year period from 2002 to 2008 in</p> <p>16 order to cause the least disruption in production</p> <p>17 and marketing processes."</p> <p>18 Do you see that?</p> <p>19 A That would be the UEP's committee and not</p> <p>20 the Scientific Advisory Committee.</p> <p>21 Q Right. And is that consistent with your</p> <p>22 knowledge of why the UEP producer committee decided</p> <p>23 that there should be this seven-year period?</p> <p>24 A It could have been more, it could have been</p> <p>25 less. I assume this was some kind of a compromise</p>
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<p>1 are scenarios regarding the cage density aspect of</p> <p>2 the guidelines?</p> <p>3 A Yes. Yes, sir.</p> <p>4 Q Okay. And who asked you, if anyone, to</p> <p>5 prepare this memo?</p> <p>6 A Well, the introduction says, "Gene Gregory</p> <p>7 asked me," and at that time I'm not sure whether he</p> <p>8 was president or vice president of UEP.</p> <p>9 Q So Mr. Gregory from UEP had asked you to</p> <p>10 prepare --</p> <p>11 A Yes, sir.</p> <p>12 Q -- this memo?</p> <p>13 And at this time you were on retainer by</p> <p>14 UEP to prepare these types of documents, correct?</p> <p>15 A Yes.</p> <p>16 Q All right. If you look at the "Background"</p> <p>17 section it refers to the cage space standards that</p> <p>18 UEP had developed.</p> <p>19 Do you see that?</p> <p>20 A Yes.</p> <p>21 Q And it says, "The standards described the</p> <p>22 stepwise introduction of increased space</p> <p>23 allowances."</p> <p>24 What were you referring to there?</p> <p>25 A "Standards described the stepwise" -- in</p>	<p>1 among the members.</p> <p>2 Q But the goal was to avoid or to minimize</p> <p>3 disruption in production?</p> <p>4 MR. TAKENOUCHI: Objection; foundation.</p> <p>5 THE WITNESS: Yes.</p> <p>6 BY MR. OLSON:</p> <p>7 Q Did you attend meetings of the UEP producer</p> <p>8 committee?</p> <p>9 A No.</p> <p>10 Q Never?</p> <p>11 A Never, never, never? They may have been</p> <p>12 part of the annual meeting where I made a</p> <p>13 presentation. There was no formal attendance at</p> <p>14 their meetings. I don't think they really</p> <p>15 encouraged it. They may have had the chairperson of</p> <p>16 our -- of the scientific committee.</p> <p>17 If I attended, it would have been in</p> <p>18 association with their annual meeting.</p> <p>19 Q Now, strictly from the standpoint of supply</p> <p>20 management, did you anticipate any benefit from the</p> <p>21 fact that the guidelines involved this stepwise</p> <p>22 increase of cage space allowances over a seven-year</p> <p>23 period?</p> <p>24 MR. TAKENOUCHI: Objection to form.</p> <p>25 THE WITNESS: Obviously, the intent of</p>

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<p>1 reducing the overpopulation of chickens was intended 2 to take time. This was an animal welfare issue, and 3 it couldn't be done without extreme disruption of 4 individual companies' replacement policies. 5 It takes five to six months to grow a young 6 chicken. And then there's another eight or ten 7 flocks alive that are producing eggs for the 8 company. And overnight would totally disrupt the 9 marketing of eggs and the supply of eggs in the 10 United States. 11 BY MR. OLSON: 12 Q Let me try it again. 13 Putting the disruption issue to one side -- 14 A Okay. Go ahead. 15 Q As we discussed yesterday, the goal of 16 supply management and balancing supply and demand 17 was one you thought was important? 18 A I do. 19 Q Focusing on that goal, did you anticipate 20 benefits to the industry resulting from the fact 21 that the guidelines contemplated a seven-year 22 stepwise increase of cage space allowances? 23 MR. TAKENOUCHI: Objection to the extent 24 the term "benefits" is unclear. 25 THE WITNESS: I anticipated a partial</p>	<p>1 from day 1, did you anticipate a benefit from their 2 stepwise increase over each of the seven years, a 3 benefit in the industry? 4 MR. TAKENOUCHI: Objection; speculation. 5 THE WITNESS: The benefits could only go to 6 year 7. If you started the very first year and took 7 care of your entire responsibility, then you were 8 going to have the lower density for the entire seven 9 years. But you didn't have to meet the obligations, 10 except for these dates here that are on this chart. 11 So you were not required to do it in the first year. 12 BY MR. OLSON: 13 Q Right. Well, let's make sure we're 14 speaking the same language. 15 A Go ahead. 16 Q Your point is under the program, a producer 17 wasn't required to get to 67 inches right away? 18 A Right. 19 Q But there were requirements for each year 20 under the program, right? 21 A Yes. That's what is spelled out here. 22 There is a different total allowance for each year. 23 Q Right. And those numbers are going up; in 24 other words, each year a producer had to increase 25 the space allowance?</p>
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<p>1 benefit the first year, more benefit the second year 2 and final benefit the seventh year. That would be 3 the ultimate benefit. 4 BY MR. OLSON: 5 Q And how about years three through six? 6 A The same, I'm not giving you every single 7 year, but -- 8 Q Okay. So just to be clear -- 9 A -- progressively. 10 Q -- a progressive benefit over the course of 11 the seven years? 12 A Yes. 13 MR. TAKENOUCHI: Objection to form. 14 BY MR. OLSON: 15 Q And just to be clear, you anticipated a 16 progressive benefit over the course of the seven 17 years? 18 A Yes. 19 Q And why was that? 20 A Because everyone was not required to comply 21 every year to the same extent. They were required 22 to comply by the seventh year. And that's when 23 everyone should have gotten to their goal of flock 24 size, density, the whole issue. 25 Q But even for those folks who were signed up</p>	<p>1 A Uh-huh -- yes. 2 Q So my question is, for those producers who 3 signed up on year 1 and met their space allowance 4 for year 1 and then for year 2, year 3, did you 5 anticipate a benefit to the industry that was 6 progressive over those years? 7 A A partial benefit, yes. 8 MR. TAKENOUCHI: Objection to form. 9 BY MR. OLSON: 10 Q And why do you say "a partial benefit"? 11 A Because it's not 100 percent. 12 Q Okay. But it would be a progressive 13 benefit? 14 A Progressive benefit, based upon the entire 15 population and which ones decided to go all the way 16 at the beginning or only go, as the table shows, up 17 to a certain level of square inches. 18 No one is required to have 67 square inches 19 in the first year or the second. The question of 20 logistics, how do you accomplish this, is an 21 independent problem for every producer because they 22 don't all have the same size cage. 23 You cannot reduce everybody the same amount 24 each year because they are starting with larger 25 cages and smaller cages.</p>

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<p style="text-align: right;">184</p> <p>1 Q And now stepping back for the industry as a 2 whole, did you anticipate, based on the work and 3 analysis you had done, a progressive benefit over 4 the course of the seven years for the industry as a 5 whole? 6 MR. TAKENOUCHI: Objection to form. 7 THE WITNESS: I think I've said that 8 already, yes. 9 BY MR. OLSON: 10 Q And that benefit would be in terms of 11 better management of supply and better prices? 12 MR. TAKENOUCHI: Objection; restates prior 13 testimony. Objection to form. 14 THE WITNESS: The result of -- of the 15 animal welfare plan and the implementation of it and 16 the dates of it and the individual companies' 17 responses, all of these things have to be taken into 18 consideration. 19 BY MR. OLSON: 20 Q And the benefit of that plan was what? 21 A It would have accrued to the entire 22 industry. 23 Q And the benefit that would have accrued to 24 the entire industry was what? 25 A Higher prices.</p>	<p style="text-align: right;">186</p> <p>1 previously unused farms or houses may have 2 occurred." 3 Do you see that? 4 A Yes, sir. 5 Q And so this concept of backfilling was 6 something that you anticipated might occur? 7 A That would -- that would make the analysis 8 less certain because it's an individual choice to 9 backfill or not to backfill, and it would probably 10 never make the final outcome off by more than 5 or 11 10 percent, because you only have so many empty 12 cages. And, also, it's a policy for many companies 13 not to backfill at all. 14 Q But just as a preliminary point -- 15 A Uh-huh. 16 Q -- the idea that some companies might 17 backfill was a possibility you recognized? 18 A Yes. 19 MR. TAKENOUCHI: Objection to form. 20 BY MR. OLSON: 21 Q Now, if you turn to the next page -- well, 22 actually, still at the bottom of 2, another variable 23 you mentioned was the introduction of new houses or 24 farms. 25 Do you see that --</p>
<p style="text-align: right;">185</p> <p>1 Q Now, in this piece you mention a couple of 2 variables that you looked at in your modeling, true? 3 A Yes. 4 Q Sometimes I have to ask just preliminary 5 questions like that. 6 A Okay. 7 Q And one of those was this concept of 8 backfilling; is that right? 9 A Yes. 10 Q You anticipated that some backfilling would 11 occur and that it was variable in how this would 12 unfold? 13 A Would you refer to the comment about 14 backfilling? 15 Q Yes. If you look at page 2. 16 A Page 2? 17 MR. TAKENOUCHI: Counsel, I'm just going to 18 object to the form of these questions. It's unclear 19 whether he's reading from the document or -- 20 MR. OLSON: You can just object to form. 21 That's fine. 22 Q Now, on page 2 -- 23 A Item 1 here? 24 Q Yes. You say, "Increases in hen counts by 25 backfilling cages at 'push-out' time or by utilizing</p>	<p style="text-align: right;">187</p> <p>1 A Yes. 2 Q -- heading? 3 And then it's discussed a little bit more 4 on the next page. 5 A Uh-huh. 6 Q And -- 7 A Yes, sir. 8 Q -- if you look, there is a large paragraph 9 there that starts "The model looks at." 10 Why don't you review that paragraph to 11 yourself? 12 A I did. 13 Q Okay. 14 A The model looks at different growth rates 15 in the industry, beginning in 2002 going to 2010. 16 Q And when you refer to growth rates, what -- 17 A Numbers of chickens or numbers of eggs. 18 MR. GODLSTEIN: Don, you're doing a really 19 great job, but I want to remind you to wait for 20 Steig to get his entire question out before you jump 21 in with your answer. 22 THE WITNESS: Okay. 23 BY MR. OLSON: 24 Q At the end of that paragraph you write, "It 25 is hoped that the industry will be able to sustain</p>

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<p>1 an improved supply/demand relationship as a result 2 of these major changes." 3 Do you see that? 4 A Yes. 5 Q Why was that the hope? 6 A Due to the average or annual variation of 7 profitability in the industry, it's not considered 8 to be 100 percent profitable, and my own 9 interpretation of this is that it's -- it has a lot 10 of problems with earnings, and therefore, price. 11 Q And why was there hope at this time that 12 the cage space guidelines could lead to a sustained 13 improvement in the supply/demand relationship? 14 MR. TAKENOUCHI: Objection; lack of 15 personal knowledge to the extent he's speaking for 16 anyone other than himself. 17 THE WITNESS: The existence of a single 18 chicken house has a maximum capacity and it has a 19 UEP recommended capacity. And until -- and once 20 you've reached the UEP number, the only way that you 21 can affect the population in the United States is 22 either through productivity of the individual 23 chicken, which it does increase every year, or by 24 someone building a new complex or new houses, 25 because the new capacity of that house is a</p>	<p>1 Go ahead. 2 MR. TAKENOUCHI: Objection to form. 3 THE WITNESS: Immediately the house is 4 going to cost more per bird as you remove 20 percent 5 of the birds. The per-bird cost is going to go up. 6 Costs, in general, go up annually with the 7 economics of the time. Lumber costs go up and the 8 metal costs go up, and so on, so that, I think, is a 9 very conservative estimate. 10 BY MR. OLSON: 11 Q What's a conservative estimate? 12 A The numbers that are quoted. 13 Q About how -- 14 A \$15 versus 10. 15 Q Okay. So you -- in other words, it's 16 possible that housing costs were even going to be 17 more expensive than you estimated here as a result 18 of the guidelines? 19 MR. TAKENOUCHI: Objection -- 20 THE WITNESS: No, I think that's taken that 21 into consideration. I think that's what we're 22 talking about. 23 BY MR. OLSON: 24 Q I'm just trying to understand what you are 25 saying was conservative.</p>
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<p>1 constant. 2 BY MR. OLSON: 3 Q Now, this possibility of producers building 4 new complexes and housing is something that you 5 considered as well, in your work? 6 A Yes, that's the growth factor. 7 Q And one of the factors that you point out 8 here is that that type of -- or building new housing 9 was going to be more expensive? 10 MR. TAKENOUCHI: Objection; misstates the 11 document. 12 THE WITNESS: Does it actually say that? 13 BY MR. OLSON: 14 Q Well, do you see where you say in the next 15 sentence, "More expensive housing" -- 16 A I see it, I see it, yeah. 17 Q -- "(as a result of lower cage density) 18 should delay start-up decisions and financing"? 19 A Immediately if you build -- 20 MR. GODLSTEIN: Wait for him to finish the 21 question. 22 THE WITNESS: Excuse me. I thought he was 23 finished. 24 BY MR. OLSON: 25 Q I was.</p>	<p>1 A I think the \$15 is a conservative result of 2 what we're talking about. 3 Q Now, in order for the egg industry to 4 benefit as a whole from these guidelines, was there 5 any limit, in your view, on how many new housing 6 complexes should be built? 7 A Well, we have to keep up with the human 8 population in the United States. As the human 9 population goes up 1 percent a year, which is 10 3 million, theoretically you need 3 million more 11 chickens, just to keep the status quo. 12 Now, if the consumption of eggs goes down, 13 and, of course, those numbers are going to change. 14 You have to take into consideration the 15 increasing productivity of the chickens at the rate 16 of half a percent a year. Over that seven-year 17 period, you would be projecting another 3 1/2 18 percent production, and that's -- and that's a lot. 19 That's 10 million birds. 20 Q So, in other words, the egg industry, even 21 under the guidelines, might need to increase 22 production to some extent? 23 A If you look at the statistics that we 24 produce in our newsletter, you'll see that the layer 25 numbers in the United States have been very</p>

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<p>1 constant, very constant layer numbers. Now, 2 remember I told you productivity of each chicken has 3 changed -- 4 So all these factors, you've got the 5 consumers' reaction to newspaper clippings about 6 cholesterol or other factors, other health factors. 7 You have some disease epidemics that have occurred 8 that will scare people away from eating eggs. And 9 so, you know, there's multiple factors going on. 10 And all of these -- if we considered every single 11 one of them, the story might be totally different, 12 but you have to take a center position. 13 Q Well, I'd like to focus on this factor of 14 building new housing complexes. 15 A Yes. 16 Q Are you aware of efforts by UEP to persuade 17 its members not to overbuild as a result of the 18 increased space allowances under the guidelines? 19 MR. TAKENOUCHI: Objection; form. 20 THE WITNESS: There are several answers to 21 that question. Do you want them all? 22 BY MR. OLSON: 23 Q Yes. Let's start with the first one. 24 A One suggestion and recommendation to 25 members is that they don't build brand-new -- add on</p>	<p>1 for so many years and then they start to fall down. 2 So there is ongoing replacement of houses all the 3 time. 4 And when they have a requirement to have 80 5 percent of the population in any given house, the 6 new house will be designed with that in mind and it 7 will be a new hundred percent. It won't be an 80 8 percent, it will be a hundred percent of that new 9 house. 10 BY MR. OLSON: 11 Q Okay. So we were talking about your 12 knowledge of efforts by UEP to persuade its members 13 not to overbuild as a result of the increased space 14 allowances under the guidelines, and you just 15 identified one, but you indicated there were others. 16 A I -- 17 MR. TAKENOUCHI: Objection to form. 18 THE WITNESS: -- have no knowledge -- 19 MR. TAKENOUCHI: Mr. Bell, could you let me 20 finish the objection; please? 21 Objection to the form he's not identified 22 who at UEP is supposedly making these 23 recommendations. 24 THE WITNESS: I have no knowledge of 25 them -- to your specific question about building</p>
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<p>1 facilities to what they've already got and that they 2 buy someone else out. 3 Q And that was a suggestion and 4 recommendation made by UEP? 5 A UEP, right. 6 So the intent there is to try to stabilize 7 the bird numbers. Once you accomplish the stable 8 bird numbers, you don't want people going out there 9 and doubling their number of houses, do you? And -- 10 You have to say yes or no. He can't get 11 you -- you're nodding your head. 12 MR. GODLSTEIN: You can't ask him questions 13 unless it is to clarify something. 14 Go ahead. 15 THE WITNESS: Okay. Go ahead. That's 16 another one. 17 BY MR. OLSON: 18 Q Okay. So that was the first suggestion and 19 recommendation? 20 A Can I add on? 21 Q Sure. 22 MR. TAKENOUCHI: Objection; lacks 23 foundation. 24 THE WITNESS: Houses only last so long, and 25 equipment, and therefore, they are only efficient</p>	<p>1 houses. Their recommendations would be that we do 2 not -- do not grow in numbers of birds or 3 production. Those are two different things. 4 BY MR. OLSON: 5 Q Okay. And what do you recall about 6 caution -- or UEP cautioning its members not to grow 7 in numbers of birds or production? 8 MR. TAKENOUCHI: Objection to form. 9 THE WITNESS: Well, that's for my own 10 personal opinion -- viewpoint. The fact that they 11 send out my newsletter with my recommendations on 12 that means that they are in somewhat of an agreement 13 with what I'm saying. 14 BY MR. OLSON: 15 Q Because you personally cautioned against 16 producers growing in numbers of birds and 17 production? 18 A Yes. I cannot point to their actual 19 document. Maybe this kind of a newsletter here, it 20 would say something to that effect. But the add on, 21 which is my letter, certainly would, over time, say 22 that too many birds is detrimental. 23 Q And, specifically in the context of the 24 increased space allowances under the program, you 25 cautioned against reacting to that by growing the</p>

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<p>1 number of birds and production and cautioned against 2 doing that? 3 A The two are independent of one another. 4 Once you get to this lower number, and then you have 5 no recommendations, regulations or anything else 6 that keeps you from -- other than maintaining the 7 capacity of those houses, you have nothing that will 8 keep you from building the second house. And that's 9 what you're cautioning the industry not to do. 10 Q All right. Now let's look at page 4 of the 11 document in front of you. There is a heading that 12 says "Results" -- 13 A Okay. 14 Q -- and you're summing up some of your work 15 here. Have you had a chance to just briefly review 16 the "Results" section? 17 A You want me to read it? 18 Q Please. 19 A Okay. I've glanced through it. 20 Q All right. I want to make sure that we 21 understand this. 22 So you are modeling the effect here -- or 23 you're reporting possible outcomes from the effect 24 of the cage space guidelines, right? 25 MR. TAKENOUCHI: Objection; misstates the</p>	<p>1 even with 50 percent compliance and at a 10 percent 2 sustained growth rate, the nation's flock in 2009 3 would still be smaller than it was today? 4 A Yes. 5 Q So you had maybe an aggressive assumption 6 and a conservative assumption there showing a range? 7 A I would have tried to bracket the possible 8 conditions, yes. 9 Q All right. And when you say in number 6, 10 "total industry farm egg income," subtracting -- and 11 you subtract 35 cents per dozen. 12 Do you see that? 13 A I see that. 14 Q Why are you subtracting 35 cents per dozen? 15 A I'm not sure I know. 16 Q Fair enough. In your "Comments" section at 17 the bottom -- 18 A Yes. 19 Q -- you say, "We don't expect everyone to 20 believe the precise numbers that are listed in the 21 tables, but the general directions should be of 22 interest to everyone in table-egg production." 23 Do you see that? 24 A Yes, sir. 25 Q Why did you believe the general direction</p>
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<p>1 document. 2 THE WITNESS: Partially. 3 BY MR. OLSON: 4 Q Yeah. And you have a couple different ways 5 of looking at it. One is the results, if there was 6 100 percent compliance and no growth? 7 A Yes. 8 Q And then you also look at 50 percent 9 compliance and 10 percent sustained growth rate. 10 Those are basically the two ways you look at it 11 here, right? 12 A I assume you're correct. I haven't read it 13 in detail. 14 Q Well, just what you report here in the 15 "Results" section? 16 A Okay. Well, you'll have to show the 17 specific sentence you are talking about. 18 Are you in "Results"? Which item? 19 Q Okay. So number 1 says with a hundred 20 percent compliance and no growth, right? 21 A Uh-huh. 22 Q You estimated that chicks hatched in 2009 23 would be down over 26 percent, correct? 24 A Yes, sir. 25 Q And then if you look at number 4 you say</p>	<p>1 would be of interest? 2 A Well, this is always -- there is always a 3 disclaimer in most everything we write. So you 4 don't want to say this is a black-and-white 5 situation, so you do use a disclaimer statement. 6 But in looking at different scenarios, the 7 direction is what's important. It's -- is it a 8 factual direction, and I believe it was, I believe 9 it is. 10 Q And what's the direction that you're 11 reporting here? 12 A Well, we're basically, once again, talking 13 about the egg numbers or bird numbers and price, and 14 so we're talking about the gross income of the 15 industry here in item 7, or whatever. So we're 16 looking at multiplying bird numbers, times 17 productivity, times price, holding, we'll say, feed 18 price constant, so you can look at the effective 19 income. And you can run your models through 20 different scenarios, that's what we've done, and 21 saying, well, the general direction is with 22 reduction of bird numbers, income of industry will 23 rise. 24 Q And the direction is the more producers 25 that participate --</p>

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<p>1 A That's part of it.</p> <p>2 Q Let me just finish this one.</p> <p>3 And the direction is the more producers</p> <p>4 that participate, the better prices and the better</p> <p>5 profits for all producers?</p> <p>6 A I would say that's a generally true</p> <p>7 statement, but it still goes back to eggs, total</p> <p>8 eggs, whether there are more producers, that may or</p> <p>9 may not be the case.</p> <p>10 As you know, we have this tremendous</p> <p>11 concentration. If we have one more large farm, that</p> <p>12 affects the price of all eggs in the United States.</p> <p>13 Q With that caveat noted, the direction</p> <p>14 you're referring to here is the more participation,</p> <p>15 the better for everyone?</p> <p>16 A Well, the fewer eggs you produce, the</p> <p>17 better it is for everyone. Participation -- let's</p> <p>18 just say you have 95 percent participation and they</p> <p>19 were all tiny little farms. That wouldn't --</p> <p>20 Q Okay.</p> <p>21 A -- accomplish much.</p> <p>22 Q But if you measure participation in terms</p> <p>23 of -- and I take it this was your point, so I'll</p> <p>24 start again.</p> <p>25 If you measure participation in terms of</p>	<p>1 a dozen, that's what they were when they had this</p> <p>2 disease problem. That's totally unpredictable. No</p> <p>3 one would have predicted that, and it's the same</p> <p>4 thing with when our feed prices double, no one would</p> <p>5 have predicted that would have happened or the</p> <p>6 results, just the general.</p> <p>7 Q We'll circle back to that, but just so your</p> <p>8 testimony is clear, the direction that you were</p> <p>9 saying in July of 2002 that should be of interest to</p> <p>10 everyone is that the more eggs that are produced</p> <p>11 under the UEP program, the better prices for the</p> <p>12 industry as a whole?</p> <p>13 A The fewer eggs, not the more. You said</p> <p>14 "more."</p> <p>15 Q The higher percentage of eggs that are</p> <p>16 subject to the program.</p> <p>17 A That makes fewer eggs.</p> <p>18 Q Right.</p> <p>19 A Okay. You didn't say that.</p> <p>20 Q All right. So the higher percentage of</p> <p>21 eggs that are subject to the program, the better</p> <p>22 prices and profits for all producers?</p> <p>23 A Yes.</p> <p>24 Q You can set that aside.</p> <p>25 Before I hand you this document, you</p>
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<p>1 eggs --</p> <p>2 A Yes.</p> <p>3 Q -- the more producers -- the more eggs that</p> <p>4 are produced under the program --</p> <p>5 A Yes.</p> <p>6 Q -- the more -- the better prices and the</p> <p>7 better profits for all producers?</p> <p>8 MR. TAKENOUCHI: Objection to form,</p> <p>9 misstates prior testimony.</p> <p>10 THE WITNESS: Yes, but I'd like to add to</p> <p>11 that.</p> <p>12 BY MR. OLSON:</p> <p>13 Q Sure.</p> <p>14 A Okay. There's only so much history</p> <p>15 involving extremely high egg prices or high egg</p> <p>16 prices, period, so the analyses have to deal with</p> <p>17 history.</p> <p>18 And history says that, within a range,</p> <p>19 these events are related.</p> <p>20 When you go to conditions like we have</p> <p>21 today, and we have totally different cost structure,</p> <p>22 totally different price structure and you have</p> <p>23 nothing to predict it on.</p> <p>24 It's just like I read the other day that</p> <p>25 Mexico prices of eggs were 80 -- no, \$2.00 -- \$8.00</p>	<p>1 testified yesterday that you would generally receive</p> <p>2 Gene Gregory's United Voices publication. Would,</p> <p>3 from time to time, you review editorials by Gene</p> <p>4 Gregory that he wrote on these topics?</p> <p>5 A Yes.</p> <p>6 (Deposition Exhibit 17 was marked for</p> <p>7 identification by the court reporter</p> <p>8 and is attached hereto.)</p> <p>9 BY MR. OLSON:</p> <p>10 Q Let me hand you what we marked Bell 17.</p> <p>11 And I'm only going to ask you to look at a</p> <p>12 portion of this, which is towards where you are. It</p> <p>13 is towards the back.</p> <p>14 MR. TAKENOUCHI: Can we have the Bates</p> <p>15 number, please?</p> <p>16 BY MR. OLSON:</p> <p>17 Q And it's -- the heading is, "Reason Why</p> <p>18 Industry Could Have Period of Profitability.</p> <p>19 Editorial By: Gene Gregory."</p> <p>20 A Yes.</p> <p>21 Q And the Bates number --</p> <p>22 A Go ahead.</p> <p>23 Q You can start looking at it while I read</p> <p>24 this.</p> <p>25 The Bates number is CM00430620 through</p>

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<p>1 -633.</p> <p>2 So why don't you just briefly skim that</p> <p>3 editorial and let me know when you're done, and then</p> <p>4 later if you want to read it in more depth, you can.</p> <p>5 A All right.</p> <p>6 Q All right. Now, do you recall, after</p> <p>7 looking at this, whether you've seen this editorial</p> <p>8 before?</p> <p>9 A Having read this editorial?</p> <p>10 Q Yes.</p> <p>11 A I would do it automatically.</p> <p>12 Q Okay. So -- okay.</p> <p>13 Now, in this editorial Mr. Gregory is</p> <p>14 referring to the fact that egg prices have reached</p> <p>15 very high levels.</p> <p>16 A And the date is 2003?</p> <p>17 Q August of 2003.</p> <p>18 A August. Okay.</p> <p>19 Q Do you see that?</p> <p>20 A I see it.</p> <p>21 Q And is that consistent with your knowledge?</p> <p>22 MR. TAKENOUCHI: Objection to foundation.</p> <p>23 It's not clear he's testifying he's actually read</p> <p>24 this particular editorial.</p> <p>25 MR. OLSON: All right. Thank you. We</p>	<p>1 Q That's fine. Let's put that aside.</p> <p>2 All right. If you look at the paragraph in</p> <p>3 the middle of this page, it says, "UEP's Animal</p> <p>4 Husbandry Guidelines."</p> <p>5 A Yes.</p> <p>6 Q And in there Mr. Gregory writes, "the fact</p> <p>7 that approximately 200 companies have begun</p> <p>8 implementing the program, this has caused a flock</p> <p>9 production and will continue to do so for some</p> <p>10 time."</p> <p>11 Do you see that?</p> <p>12 A Yes.</p> <p>13 Q And then in the next paragraph do you see</p> <p>14 where he says, "The hatch reduction to meet the</p> <p>15 Animal Husbandry Guidelines began with chicks</p> <p>16 hatched after April 1, 2002"?</p> <p>17 A Yes.</p> <p>18 Q Now based -- to your knowledge, is there a</p> <p>19 relevant distinction between flock reduction and a</p> <p>20 hatch reduction in this context?</p> <p>21 A They should be -- they should be</p> <p>22 correlated.</p> <p>23 Remember there is a six-year -- five- to</p> <p>24 six-month delay when one occurs and the other --</p> <p>25 they become hens.</p>
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<p>1 don't need speaking objections.</p> <p>2 THE WITNESS: I can never recall the price</p> <p>3 of eggs three months ago.</p> <p>4 BY MR. OLSON:</p> <p>5 Q All right. Fair enough.</p> <p>6 In any case, just to orient ourselves, it</p> <p>7 appears in August 2003 eggs prices have --</p> <p>8 A And, of course, that's the summertime, and</p> <p>9 summertime is usually the lowest price for the year.</p> <p>10 Q Right. And, in fact, Mr. Gregory reports</p> <p>11 the Urner Barry quote had reached a level in the</p> <p>12 summer of 2003 that had never previously been</p> <p>13 recorded.</p> <p>14 Do you see that right at the very</p> <p>15 beginning?</p> <p>16 A That's -- well, he had a quote of a dollar.</p> <p>17 Urner Barry quoted, not what the producer gets, by</p> <p>18 any means. It's a benchmark.</p> <p>19 So if he's comparing apples and apples, and</p> <p>20 then I guess he's made -- he's researched the</p> <p>21 subject.</p> <p>22 I would have my own data on the monthly egg</p> <p>23 prices that I maintain, and I could go back and</p> <p>24 verify it if you want me to. I didn't make any</p> <p>25 attempt to verify it.</p>	<p>1 I think I indicated yesterday the hatch</p> <p>2 used to be a very important indicator of what's</p> <p>3 going to happen in the future.</p> <p>4 I report the hatch every month. It comes</p> <p>5 in the United States Department of Agriculture</p> <p>6 figures.</p> <p>7 In most cases I believe their numbers, but</p> <p>8 some things they are a little weak on.</p> <p>9 Q All right. So -- but would it be fair to</p> <p>10 say the cage space guidelines were expected to lead</p> <p>11 to both a flock reduction and a hatch reduction?</p> <p>12 A Not necessarily a hatch reduction, but the</p> <p>13 objective of reducing the flock size would affect</p> <p>14 the total number of eggs that are laid.</p> <p>15 As far as affecting hatch, the hatch goes</p> <p>16 up and down as a result of the failure to make</p> <p>17 enough earnings.</p> <p>18 And you want to cut that back in the</p> <p>19 future. I can't afford my chicks today, so I don't</p> <p>20 hatch them.</p> <p>21 Q All right. I want to focus on one point</p> <p>22 here where, at the top of the next page, the one</p> <p>23 that ends in -631 --</p> <p>24 A Okay.</p> <p>25 Q This is just a preliminary question. Do</p>

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<p>1 you see in the first couple of paragraphs there</p> <p>2 Mr. Gregory is making the point that to the extent</p> <p>3 the industry needs to build new facilities --</p> <p>4 A Let's see --</p> <p>5 Q -- that it should only be done to replace</p> <p>6 the loss reduction?</p> <p>7 A In the first three paragraphs someplace?</p> <p>8 MR. GODLSTEIN: Are you starting from the</p> <p>9 bottom of the page?</p> <p>10 MR. OLSON: Well, hold on. Hold on.</p> <p>11 Q All right. Let's try it this way. In the</p> <p>12 middle of the page Mr. Gregory says, "Two companies</p> <p>13 have recently provided UEP with performance of</p> <p>14 farms. We have attempted to use this as a model to</p> <p>15 calculate how many hens we need to replace the low</p> <p>16 reduction."</p> <p>17 A Yes.</p> <p>18 Q Do you know if you worked on that model?</p> <p>19 A Did I?</p> <p>20 Q Yes.</p> <p>21 A I don't believe so. I think this is --</p> <p>22 they named the company, didn't they?</p> <p>23 Q Well, if you look two pages, it is the last</p> <p>24 page in the document, it ends in -633?</p> <p>25 A Yes.</p>	<p>1 Q Let me hand you what we marked Bell 18.</p> <p>2 A Okay. "High Egg Prices and Molting."</p> <p>3 Go ahead.</p> <p>4 Q And this is a document Bates-stamped</p> <p>5 BELL002761 through -2763.</p> <p>6 And can you identify this, Mr. Bell, as one</p> <p>7 of the memos you wrote under the sponsorship of UEP</p> <p>8 dated December 10th, 2003?</p> <p>9 A Yes, sir.</p> <p>10 Q It's titled, "High Egg Prices and Molting</p> <p>11 How Egg Prices Affect the Decision to Molt," right?</p> <p>12 A Yes.</p> <p>13 Q Now, from the first sentence of your memo</p> <p>14 you're indicating that based on the data that you</p> <p>15 looked at, the industry, by the end of 2003, was</p> <p>16 experiencing some of the highest producer egg prices</p> <p>17 in history, right?</p> <p>18 A That's what it says, yes.</p> <p>19 Q And then in the document you look at how</p> <p>20 that affects decisions, the economics of the</p> <p>21 decision of a producer to molt?</p> <p>22 A Yes.</p> <p>23 Q And if you look at page 2 at the end of the</p> <p>24 second paragraph from the top, you write, "Obviously</p> <p>25 current egg price levels do not justify molting."</p>
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<p>1 Q There is this model for replacement of loss</p> <p>2 production.</p> <p>3 A Well, if he had developed it, then I didn't</p> <p>4 develop it.</p> <p>5 Q Just my question is, looking at this, do</p> <p>6 you know if that's something that you worked on?</p> <p>7 A Well --</p> <p>8 MR. GODLSTEIN: See the model?</p> <p>9 THE WITNESS: This model down here?</p> <p>10 MR. GOLDSTEIN: Yes.</p> <p>11 BY MR. OLSON:</p> <p>12 Q Right.</p> <p>13 A I think he's basing that on gathering data</p> <p>14 from two of his cooperating farms, and I don't do</p> <p>15 that. I based it on larger samples of the entire</p> <p>16 nation or all of California, or whatever it is. I</p> <p>17 don't just take two farms and say that it means</p> <p>18 anything.</p> <p>19 BY MR. OLSON:</p> <p>20 Q Okay. You can put that aside. I just</p> <p>21 wanted to know if you've worked on that model.</p> <p>22 (Deposition Exhibit 18 was marked for</p> <p>23 identification by the court reporter</p> <p>24 and is attached hereto.)</p> <p>25 BY MR. OLSON:</p>	<p>1 Do you see that?</p> <p>2 A When it underlines "current" -- what does</p> <p>3 it say about current? -- it underlines the word</p> <p>4 "current"?</p> <p>5 Q Right.</p> <p>6 A So it says -- the other statement is</p> <p>7 relative to general prices and so on.</p> <p>8 The current says that the relationship at</p> <p>9 this moment is that you shouldn't molt, right, "do</p> <p>10 not justify molting."</p> <p>11 So if you look at all of the possibilities</p> <p>12 of molting price there is a relationship, but you</p> <p>13 can go too far and you don't go far enough.</p> <p>14 Individual companies can make a lot more</p> <p>15 money molting, other companies can make a lot more</p> <p>16 money not molting and so you can condemn it -- I</p> <p>17 think we had another document that some of the</p> <p>18 members were condemning it, per se. Well, that's</p> <p>19 just not --</p> <p>20 Q But from the point of view of economics,</p> <p>21 the point you make here is that, in general, molting</p> <p>22 appears to be justified only under low margin</p> <p>23 combinations of low egg prices and high pullet</p> <p>24 prices?</p> <p>25 A Did I say "only"?</p>

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<p>1 Q Do you see where you say, "In general, 2 molting appears to be just identified only under low 3 margin combinations of low prices and high" -- 4 A I did say "only," yeah. 5 Q And that was your view at the time? 6 A Obviously, yes. 7 Q And the point you're making here is under 8 these very high egg prices -- 9 A These are not high egg prices. 10 Q Well, you referred to them as the 11 highest -- 12 A I mean compared to today. 13 Q Okay. Well, let's just talk -- in late 14 2003 the where egg prices were the highest in 15 history, the point you're making here is you no 16 longer justify molting as an economic matter; is 17 that right? 18 A I don't think so. 19 MR. TAKENOUCHI: Objection to form, 20 misstates prior testimony. 21 THE WITNESS: I'll have to read it a third 22 time and make sure I'm understanding you -- "appears 23 to be justified" -- 24 MR. GODLSTEIN: I don't think your answer 25 got on the record.</p>	<p>1 So in my thinking when we have 40 percent 2 of our years are below cost, we're selling eggs to 3 our buyers below cost 40 -- 40 percent of the time, 4 then what -- how are we supposed to determine what 5 we're going to do with the next flock about molting? 6 It is not a matter of the next flock, it is a matter 7 of the company's policy. The company's policy is to 8 molt or not to molt. And you can't look at just ups 9 and downs of a moment in time. 10 So it's -- I don't know. I don't see that 11 I've done anything wrong. 12 BY MR. OLSON: 13 Q Oh, no, I don't mean to suggest you did 14 anything wrong. I was just -- these questions are 15 just to make sure we're understanding what was being 16 said here. 17 A Have I explained it? 18 Q Well, what you're saying here is that in 19 light of the current egg price levels, molting was 20 not economically justified? 21 MR. TAKENOUCHI: Objection to form. 22 THE WITNESS: I would have to know what the 23 current egg price was at the time, because, like I 24 say, in general, molting is done during low margin 25 periods -- pardon me, that's not a good statement.</p>
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<p>1 Did you hear him say "I don't think so"? 2 You have to speak up. 3 THE WITNESS: I don't think so. 4 BY MR. OLSON: 5 Q Let's just try the question again so we 6 can -- so the point you're making here is that as an 7 economic matter, in general, molting appears to be 8 justified only under low margin combinations of low 9 egg prices and high pullet prices, right? 10 MR. TAKENOUCHI: Objection to form, 11 misstates prior testimony. 12 THE WITNESS: Well, the question of 13 "appears" means with the evidence that we have 14 available in front of us, which this is a 15 newsletter, it appears that way. I'm making a case 16 for that it doesn't apply to everybody, it doesn't 17 apply to every set of high prices and low prices and 18 costs and income and so on. 19 The title of the entire paper has to do 20 with high egg prices and molting. Well, they are 21 experiencing high egg prices apparently at this 22 time. People are questioning should we be molting, 23 and we are talking about generalities that the 24 molting is primarily a benefit under low-profit 25 situations or no-profit situations.</p>	<p>1 It's more justifiable under low margin periods. 2 In California it's always been the thing to 3 do, and everybody did it. And it started in 4 Washington state where they did it every flock once 5 or twice, once or twice molting. 6 California followed into it. And now there 7 are parts of the country, New England, for example, 8 nobody molts. 9 BY MR. OLSON: 10 Q Okay. You can put that aside. 11 (Deposition Exhibit 19 was marked for 12 identification by the court reporter 13 and is attached hereto.) 14 MR. OLSON: I've handed you what we've 15 marked Bell 19. 16 MR. GODLSTEIN: Before we start with Bell 17 19, why don't we take a break. 18 MR. OLSON: Okay. 19 THE VIDEOGRAPHER: The time is 20 approximately 11:03 a.m., and we're going off the 21 record. 22 (Recess.) 23 THE VIDEOGRAPHER: The time is 24 approximately 11:19 a.m., and we're back on the 25 record.</p>

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<p>1 BY MR. OLSON:</p> <p>2 Q All right, Mr. Bell, we're looking at Bell</p> <p>3 Exhibit 19. Can you identify this as an e-mail you</p> <p>4 sent to Al Pope and Gene Gregory on March 24th, 2004</p> <p>5 with an attachment that's one of your memos.</p> <p>6 MR. TAKENOUCHI: Can we get a Bates number?</p> <p>7 MR. OLSON: UE00088125 through -127.</p> <p>8 Q And do you recall preparing this memo?</p> <p>9 A Yes.</p> <p>10 Q Do you recall discussing it with Al Pope</p> <p>11 and Gene Gregory?</p> <p>12 A Only in e-mail form.</p> <p>13 Q Do you recall discussions other than what</p> <p>14 we're looking at here in Bell 19?</p> <p>15 A About this same subject?</p> <p>16 Q Right.</p> <p>17 A About this newsletter?</p> <p>18 Q Right.</p> <p>19 A No, I don't recall any discussion about it,</p> <p>20 except for the e-mail.</p> <p>21 Q Okay. Fair enough. So let's look at the</p> <p>22 memo. And it is dated March 1, 2004, and it's</p> <p>23 titled, "What a Difference a Year Makes," and it is</p> <p>24 one you prepared, correct?</p> <p>25 A Yes.</p>	<p>1 Q The improved egg price led to --</p> <p>2 A Yes.</p> <p>3 Q -- an improvement in revenue of a billion</p> <p>4 dollars or more?</p> <p>5 A Yes.</p> <p>6 Q And as far as the reasons for those</p> <p>7 improved prices, you identify various factors,</p> <p>8 including that the industry successfully held hen</p> <p>9 numbers down, right?</p> <p>10 MR. TAKENOUCHI: Objection to form.</p> <p>11 THE WITNESS: In Dallas it shows a very</p> <p>12 small up to your appearance reduction in bird</p> <p>13 numbers and a considerable elevation in price, and</p> <p>14 that's the concept of a ratio of a production change</p> <p>15 to price that we talked about earlier.</p> <p>16 BY MR. OLSON:</p> <p>17 Q And one thing that you observed during this</p> <p>18 period is that the industry had successfully held</p> <p>19 hen numbers down, correct?</p> <p>20 A That's what the statement says, yes.</p> <p>21 Q And that no increases in production had</p> <p>22 been made to compensate for a larger human</p> <p>23 population?</p> <p>24 A Right, that would have taken another</p> <p>25 3 million, as I indicated earlier, annually.</p>
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<p>1 Q When you say "What a Difference a Year</p> <p>2 Makes," you're referring to, at least in part, the</p> <p>3 prices that were at favorable levels at the time?</p> <p>4 A I would say I was looking at total margin,</p> <p>5 total net income. That's the number we're quoting</p> <p>6 here.</p> <p>7 Q When you say "net income," that means</p> <p>8 profits?</p> <p>9 A Good question. It would be income minus</p> <p>10 costs.</p> <p>11 Q Okay.</p> <p>12 A But not taxes or anything of that.</p> <p>13 Q But for a layperson sometimes that's</p> <p>14 just --</p> <p>15 A I think you're okay.</p> <p>16 Q -- it is just referred to as profits?</p> <p>17 And what you report here is over the course</p> <p>18 of the year, the conditions in the industry that</p> <p>19 prevailed led to an improvement in industry revenue</p> <p>20 of \$1 billion or more?</p> <p>21 MR. TAKENOUCHI: Objection to form.</p> <p>22 BY MR. OLSON:</p> <p>23 Q Is that right?</p> <p>24 A That's conclusions. The table indicates it</p> <p>25 is mostly egg price was the reason.</p>	<p>1 Q And those results were consistent with your</p> <p>2 expectations of the results of the cage space</p> <p>3 program being implemented?</p> <p>4 MR. TAKENOUCHI: Objection to form,</p> <p>5 misstates prior testimony.</p> <p>6 BY MR. OLSON:</p> <p>7 Q Is that right?</p> <p>8 A Would you restate it?</p> <p>9 Q Yes. Those results about hen numbers and</p> <p>10 production, were those consistent with your</p> <p>11 expectations about the implementation of the</p> <p>12 increased cage space allowance guidelines?</p> <p>13 MR. TAKENOUCHI: Objection; form, misstates</p> <p>14 prior testimony.</p> <p>15 THE WITNESS: I don't think I state that in</p> <p>16 the letter itself. I say there are many theories</p> <p>17 why prices exceeded everyone's expectations, but we</p> <p>18 believe they were affected by a combination of</p> <p>19 supply and demand, circumstances that elevated</p> <p>20 prices beyond historical experience, so I don't</p> <p>21 think I can agree with your premise.</p> <p>22 BY MR. OLSON:</p> <p>23 Q But putting aside what's stated in the</p> <p>24 document, your expectation, based on the work you've</p> <p>25 done, was that the implementation of the cage space</p>

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<p style="text-align: right;">220</p> <p>1 guidelines was going to affect supply in a manner</p> <p>2 consistent with what's reported here?</p> <p>3 A We -- in other -- in other reports that</p> <p>4 we've already discussed, that would be the</p> <p>5 relationship that we would expect.</p> <p>6 Q All right. You can put that aside.</p> <p>7 (Deposition Exhibit 20 was marked for</p> <p>8 identification by the court reporter</p> <p>9 and is attached hereto.)</p> <p>10 BY MR. OLSON:</p> <p>11 Q Let me hand you what we've marked Bell 20.</p> <p>12 This is Bates-stamped BELL-D-0028600 through -28605.</p> <p>13 And, Mr. Bell, can you identify this as a</p> <p>14 memo that you wrote dated July 23, 2004 and titled,</p> <p>15 "Arguments For and Against Back Filling Table Egg</p> <p>16 Layer Flocks"?</p> <p>17 A Yes.</p> <p>18 Q Now, we've seen in some other memos that</p> <p>19 you say that Gene Gregory had asked you to look at</p> <p>20 the subject of the memo. Do you recall whether</p> <p>21 Mr. Gregory asked you to look at backfilling?</p> <p>22 A I --</p> <p>23 MR. TAKENOUCHI: Objection to form.</p> <p>24 THE WITNESS: I have a feeling that he</p> <p>25 asked me to write this one, because I don't usually</p>	<p style="text-align: right;">222</p> <p>1 these preliminary questions going back to</p> <p>2 Mr. Gregory's interest in this, and you referred to</p> <p>3 Mr. Gregory being concerned with anything that</p> <p>4 diluted the effects of the cage density policies.</p> <p>5 A Yes.</p> <p>6 Q Just to refocus on that for a moment, my</p> <p>7 question was, were you aware of a concern by</p> <p>8 Mr. Gregory at this time that backfilling was a</p> <p>9 loophole of sorts in those cage density policies?</p> <p>10 MR. TAKENOUCHI: Objection; lack of</p> <p>11 personal knowledge.</p> <p>12 THE WITNESS: The recommendations of UEP</p> <p>13 and the agreements that people made relative to</p> <p>14 density were for a maximum number of birds.</p> <p>15 If a person had normal mortality versus a</p> <p>16 catastrophic mortality, there's two different</p> <p>17 thoughts about backfilling.</p> <p>18 If your house is only -- if you're only</p> <p>19 allowed 80 percent of your original, you originally</p> <p>20 had 100 percent, now 80, and you lost half of them</p> <p>21 due to a catastrophic emergency, then he would make</p> <p>22 a very big claim to somebody to replace those</p> <p>23 missing birds, because they are going to be missing</p> <p>24 for one or two years. That's the whole concept.</p> <p>25 So you have people that are having</p>
<p style="text-align: right;">221</p> <p>1 use the word "backfilling." I think that's more of</p> <p>2 an industry word than one I would use.</p> <p>3 BY MR. OLSON:</p> <p>4 Q And do you recall at this time that</p> <p>5 backfilling was something that Gregory was concerned</p> <p>6 about?</p> <p>7 A He would be concerned with anything that</p> <p>8 diluted the effects of their cage density policies.</p> <p>9 Q And would it be fair to say that there was</p> <p>10 some concern by Mr. Gregory and others at this time</p> <p>11 that backfilling was a loophole of sorts in those</p> <p>12 cage density policies?</p> <p>13 A I personally would be opposed to</p> <p>14 backfilling, more from a social, chicken social, and</p> <p>15 from a disease potential. Historically, we never</p> <p>16 recommend backfilling.</p> <p>17 Also from identification of a flock, we</p> <p>18 lose total identification when we mix birds from</p> <p>19 other flocks. And I depend very heavily on flock</p> <p>20 identity and flock performance in all of our</p> <p>21 studies, model building, and so on.</p> <p>22 So this, I'm pretty sure, I was asked to</p> <p>23 talk about this, and I hope -- I haven't reread it</p> <p>24 today, but I hope it was fair to both sides.</p> <p>25 Q Well -- and we'll get to that. But just as</p>	<p style="text-align: right;">223</p> <p>1 excessive mortality. And what I mean by "excessive</p> <p>2 mortality," it would be, say, from 10 points -- .1</p> <p>3 percent a week to 40 or 50, and so that's a four- to</p> <p>4 fivefold difference in mortality.</p> <p>5 So it's an offer from the system to the</p> <p>6 individual members who need to do this, who need to</p> <p>7 do this because it reduces their hen numbers way</p> <p>8 more than normal.</p> <p>9 BY MR. OLSON:</p> <p>10 Q Okay. Let's put aside the issue of</p> <p>11 excessive mortality.</p> <p>12 A Okay.</p> <p>13 Q Putting aside that issue, were you aware of</p> <p>14 a concern at this time in 2004 that the use of</p> <p>15 backfilling in cases of normal mortality was</p> <p>16 undercutting the purposes of the cage density</p> <p>17 guidelines?</p> <p>18 MR. TAKENOUCHI: Objection to form.</p> <p>19 THE WITNESS: Any backfilling would</p> <p>20 increase the population and would defeat the</p> <p>21 original effect of reducing the profitability.</p> <p>22 BY MR. OLSON:</p> <p>23 Q And that was a concern that Mr. Gregory had</p> <p>24 at this time, was it --</p> <p>25 MR. TAKENOUCHI: Objection to form.</p>

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<p style="text-align: right;">224</p> <p>1 MR. OLSON: Strike that.</p> <p>2 Q Was that a concern that Mr. Gregory had at</p> <p>3 this time, to your knowledge?</p> <p>4 A He would have been confronted with -- from</p> <p>5 individual members that this is a concern to me as</p> <p>6 an individual member, and if there is enough of</p> <p>7 that, then it is a concern to UEP as well. And if</p> <p>8 there is enough concern to that, then he would turn</p> <p>9 it over to somebody else.</p> <p>10 These are my pros and cons, my advantages,</p> <p>11 my disadvantages, as I perceive them, but there are</p> <p>12 undoubtedly others.</p> <p>13 Q If you look at just -- I think to get to</p> <p>14 your summary here, if you look at the sentence at</p> <p>15 the bottom of page 3 that's cut off there, it starts</p> <p>16 with, "If enough producers adopt the practice of" --</p> <p>17 and then it continues on to the next page</p> <p>18 "backfilling, we would be faced with an additional 2</p> <p>19 to 2.5 percent laying hens and a resultant egg price</p> <p>20 depression of 10 percent or 5 to 6 cents per dozen</p> <p>21 (or more)."</p> <p>22 Do you see that?</p> <p>23 A Yes.</p> <p>24 Q And was that a concern that you had at this</p> <p>25 time, that the practice of backfilling could lead to</p>	<p style="text-align: right;">226</p> <p>1 MR. TAKENOUCHI: Objection; asked and</p> <p>2 answered.</p> <p>3 THE WITNESS: He asked me to give a</p> <p>4 two-sided viewpoint in the first place. So he was</p> <p>5 concerned, enough of his people were concerned, that</p> <p>6 they should address it. And he didn't feel like he</p> <p>7 was capable of doing it himself and I was available,</p> <p>8 and so he, undoubtedly, asked me to give it some</p> <p>9 thought.</p> <p>10 BY MR. OLSON:</p> <p>11 Q All right. And then you attach, as you'll</p> <p>12 see on page 5, an article entitled, "Potential</p> <p>13 Health Risks of Backfilling at Molt."</p> <p>14 Do you see that?</p> <p>15 A Yes.</p> <p>16 Q By Kenton Kreager of Hy-Line International?</p> <p>17 A Yes.</p> <p>18 Q What is Hy-Line International?</p> <p>19 A Yes.</p> <p>20 Q What is Hy-Line International?</p> <p>21 A It is the largest producer of baby chicks.</p> <p>22 Q So it's an egg producer?</p> <p>23 MR. TAKENOUCHI: No --</p> <p>24 BY MR. OLSON:</p> <p>25 Q Oh, chick producer?</p>
<p style="text-align: right;">225</p> <p>1 that?</p> <p>2 A After he asked me to give some thought to</p> <p>3 this subject, and this -- a paper like this might</p> <p>4 take me a day's worth of thought, as opposed to five</p> <p>5 minutes here, but that's my conclusions about that</p> <p>6 one issue of the backfilling.</p> <p>7 Q And that raised concerns for you?</p> <p>8 A Well, that's a significant amount of money.</p> <p>9 Q And you then, in bold, underlined --</p> <p>10 basically cautioned individual producers not to</p> <p>11 engage in that practice, right?</p> <p>12 A Yes. I'm concerned about multiple small</p> <p>13 amounts giving us a large amount. And if you just</p> <p>14 look at one little thing and say that it only</p> <p>15 affects the industry by a penny a hen, well, you</p> <p>16 multiply that by almost 300,000 -- 300 million, and</p> <p>17 then you are talking about the real money. But if</p> <p>18 you are also relating it to the profitability of the</p> <p>19 industry where you're talking about maybe 25 to 50</p> <p>20 cents, well, 1 cent a hen is several percentage</p> <p>21 points.</p> <p>22 Q And do you recall whether at this time</p> <p>23 Mr. Gregory shared your concern that the use of</p> <p>24 backfilling in the industry could hurt the</p> <p>25 industry's profitability?</p>	<p style="text-align: right;">227</p> <p>1 A Chick producer.</p> <p>2 Q And do you see at the bottom Mr. Kreager,</p> <p>3 the bottom paragraphs says, "Transfers of back-fill</p> <p>4 hens from within the same complex should be safe, as</p> <p>5 all houses within a complex are usually of the same</p> <p>6 vaccination history and exposure."</p> <p>7 Do you see that?</p> <p>8 A Yes, I see that.</p> <p>9 Q Was that consistent with your knowledge?</p> <p>10 A Say it again.</p> <p>11 Q Was that consistent with your knowledge?</p> <p>12 MR. TAKENOUCHI: Objection to form.</p> <p>13 THE WITNESS: I would not be -- he's a</p> <p>14 veterinarian, by the way, so he's a doctor.</p> <p>15 I feel highly that he's a very experienced</p> <p>16 person, and he visits many, many more farms than I</p> <p>17 do and gets involved in their individual problems.</p> <p>18 I would have been more strongly -- I</p> <p>19 wouldn't have said the same vaccination history</p> <p>20 between houses, maybe similar, but not the same.</p> <p>21 Most companies have a vaccination policy, but it</p> <p>22 does change over time.</p> <p>23 The chickens on a given farm at any point</p> <p>24 in time in a complex -- the definition of a complex</p> <p>25 is multiple ages and there may be eight to ten</p>

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<p>1 different houses, eight to ten different ages and 2 they are -- that's also a two-year span. 3 So what's being recommended today has not 4 been recommended two years ago. 5 BY MR. OLSON: 6 Q All right. Thank you. You can put that 7 aside. 8 (Deposition Exhibit 21 was marked for 9 identification by the court reporter 10 and is attached hereto.) 11 BY MR. OLSON: 12 Q I'm handing you what's been marked Bell 21. 13 I'm going to have to get the Bates stamp of 14 this document. 15 It is UE0153245 through -246. 16 Mr. Bell, can you identify this as the 17 minutes of a shell egg marketing committee meeting 18 in October 20th, 2004 that you attended? 19 A Yes. 20 Q And do you recall why you attended this 21 meeting? 22 A This was nine years ago; is that right? 23 Nine years ago. I made presentations at three or 24 four or five of their annual meetings. I would have 25 to go back in my diary and figure out what the</p>	<p>1 also, and he and I correspond quite a bit because we 2 do have common interest. 3 He reported the Chilson report, Chilson is 4 an accounting firm that, at that time, was heavily 5 used in the industry and he had a lot of company 6 data across the country. All that was treated 7 confidentially between companies. 8 "Gregory presented further reports and 9 pleaded with the attendees to take care of business 10 by reducing their flock age" -- 11 MR. TAKENOUCHI: Just for the record, it 12 seems like Mr. Bell -- 13 MR. OLSON: Please, do not interrupt the 14 witness. 15 MR. TAKENOUCHI: Well, there is no question 16 here. 17 MR. OLSON: Okay. But what are you doing 18 speaking? 19 MR. TAKENOUCHI: Objection; there is no 20 question pending. 21 MR. OLSON: You're going to object in the 22 middle of him talking? 23 THE WITNESS: I thought I was supposed to 24 go over what it says. 25 BY MR. OLSON:</p>
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<p>1 subject was. I don't see it listed here. 2 Q You know, Mr. Bell, if I ask you if you 3 recall something and you don't, you're entitled to 4 say that. You don't have to -- 5 A I don't have to give you an explanation? 6 Q If you don't know the answer, that's fine. 7 A I want to give you an explanation. Okay. 8 I do not recall what the subject was. 9 Q I appreciate your willingness to be 10 helpful. I just want you to know that I have to ask 11 the questions. If you don't recall something from 12 nine years ago, that's fair. 13 A That doesn't help you much, but go ahead. 14 Q Okay. Thank you. 15 But if we look through it and it jogs your 16 memory, let us know. 17 I just want to look at the -- there is a 18 heading at the bottom that says, "Industry 19 Statistics and Economics," the bottom of page 1 and 20 spills over to page 2. 21 Why don't you just review that section. 22 A Ken Looper was their vice president. He 23 presented -- he was a very big man on statistics. 24 We corresponded -- his company is the 25 largest company in the United States, it was then</p>	<p>1 Q Okay. And have you read it? 2 A I'm trying to read it. 3 Q Okay. You don't have to read it out loud. 4 A Okay. Okay. There is a statement about 5 stop backfilling. 6 Is that your question? 7 Q Well, that was going to be my question. 8 All right. So you see a reference to Gene 9 Gregory pleading with the attendees at the meeting 10 to take care of business by reducing their flock 11 age, stop backfilling and the use of old depreciated 12 houses? 13 A Yes, I do see that. 14 Q Does that refresh your recollection on 15 views expressed by Mr. Gregory at the time about 16 this use of backfilling? 17 A This was four months beyond -- four or five 18 months beyond my complete article here that we just 19 talked about. 20 Now, the problem has not been resolved in 21 four months. 22 MR. GODLSTEIN: Don, Steig's question was 23 does that refresh your recollection about -- 24 BY MR. OLSON: 25 Q About Mr. Gregory's views on backfilling in</p>

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<p>1 2004.</p> <p>2 A I understand he's still concerned.</p> <p>3 Q And Mr. Gregory, at this meeting that you</p> <p>4 attended, pleaded with producers to stop</p> <p>5 backfilling; is that your understanding?</p> <p>6 MR. TAKENOUCHI: Objection to form.</p> <p>7 THE WITNESS: Along with several other</p> <p>8 things.</p> <p>9 BY MR. OLSON:</p> <p>10 Q And these other things are reducing their</p> <p>11 flock age.</p> <p>12 What does that refer to?</p> <p>13 MR. TAKENOUCHI: Objection to form.</p> <p>14 THE WITNESS: I'm trying to think what</p> <p>15 reducing the flock age would result in.</p> <p>16 To me it would result in higher</p> <p>17 productivity per bird.</p> <p>18 BY MR. OLSON:</p> <p>19 Q If you're not sure what Mr. Gregory is</p> <p>20 referring to, that's fine.</p> <p>21 A Okay. I don't know.</p> <p>22 Q Okay. And when Mr. Gregory pleaded with</p> <p>23 the attendees to take care of business by -- and</p> <p>24 refers to the use of old depreciated houses, do you</p> <p>25 know what that was referring to?</p>	<p>1 and would have discussed it in our own Scientific</p> <p>2 Advisory Committee.</p> <p>3 Q And in the Scientific Advisory Committee,</p> <p>4 and I believe we went over this yesterday, do you</p> <p>5 recall that that committee said that there should be</p> <p>6 a minimum of 4 inches of feeder space per hen?</p> <p>7 MR. TAKENOUCHI: Objection; vague as to</p> <p>8 time.</p> <p>9 THE WITNESS: Yes.</p> <p>10 BY MR. OLSON:</p> <p>11 Q But the producer committee at UEP didn't</p> <p>12 put that 4 inch requirement in the guidelines?</p> <p>13 MR. TAKENOUCHI: Objection to form.</p> <p>14 THE WITNESS: I don't know about the</p> <p>15 manuscript that you've handed out here yesterday,</p> <p>16 whether that was the final member copy or if that</p> <p>17 was a draft copy.</p> <p>18 BY MR. OLSON:</p> <p>19 Q I believe you're referring to the</p> <p>20 scientific committee guidelines and not the producer</p> <p>21 guidelines.</p> <p>22 But, in any case, do you recall that the</p> <p>23 Scientific Advisory Committee learned that under the</p> <p>24 cage space guidelines that were being implemented by</p> <p>25 UEP, birds were actually getting less feeder space</p>
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<p>1 A I can't -- I do not know what he is getting</p> <p>2 at.</p> <p>3 Q Okay. You can put that aside.</p> <p>4 (Deposition Exhibit 22 was marked for</p> <p>5 identification by the court reporter</p> <p>6 and is attached hereto.)</p> <p>7 BY MR. OLSON:</p> <p>8 Q Let me hand you what is marked Bell 22, and</p> <p>9 this document is Bates-stamped UE0294465 through</p> <p>10 -4468.</p> <p>11 I'll ask you, Mr. Bell, if you can identify</p> <p>12 this as the minutes of a joint meeting of the UEP</p> <p>13 Scientific Advisory Committee and UEP Producer</p> <p>14 Committee For Animal Welfare dated June 10th and</p> <p>15 11th, 2004?</p> <p>16 A Yes.</p> <p>17 Q And do you recall this meeting?</p> <p>18 A Vaguely.</p> <p>19 Q Do you recall why a joint meeting of the</p> <p>20 Scientific Advisory Committee and the producer</p> <p>21 committee was held at this time?</p> <p>22 A No, I don't.</p> <p>23 Q Do you recall discussions about the issue</p> <p>24 of feeder space guidelines around this time?</p> <p>25 A Apparently we discussed it at this meeting</p>	<p>1 than they had previously?</p> <p>2 MR. TAKENOUCHI: Objection; form.</p> <p>3 BY MR. OLSON:</p> <p>4 Q Well, actually, why don't I refer you to --</p> <p>5 if you look at the opening comments by Chairman</p> <p>6 Bahan.</p> <p>7 Do you see that?</p> <p>8 A Yes.</p> <p>9 Q Who is Paul Bahan?</p> <p>10 A He is a producer. And he was the chairman</p> <p>11 of the UEP animal welfare committee.</p> <p>12 Q And do you see where Mr. Bahan -- the</p> <p>13 minutes say he stated that the scientific committee</p> <p>14 had supported UEP's feeder space guidelines until it</p> <p>15 became known that the new deeper cage was actually</p> <p>16 reducing feeder space?</p> <p>17 MR. TAKENOUCHI: Objection; misstates the</p> <p>18 document.</p> <p>19 THE WITNESS: I think that that's a true</p> <p>20 statement. The cage manufacturers did start to</p> <p>21 change the shape of their cages in order to, more or</p> <p>22 less, address this issue, but they never did get to</p> <p>23 the 4 inches of feeder space.</p> <p>24 BY MR. OLSON:</p> <p>25 Q So would it be correct to say that under</p>

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<p style="text-align: right;">236</p> <p>1 the UEP program as of mid-2004, as that program was</p> <p>2 implemented, birds are actually getting less feeder</p> <p>3 space, in some cases, than they had before?</p> <p>4 MR. TAKENOUCHI: Objection; foundation,</p> <p>5 lacks personal knowledge. Objection to form.</p> <p>6 BY MR. OLSON:</p> <p>7 Q Was that your understanding?</p> <p>8 A I don't know of anybody that's made that --</p> <p>9 drawn that conclusion, because they were getting</p> <p>10 less than 4 inches before until a much earlier stage</p> <p>11 when they got 4 inches of feeder space. Then the</p> <p>12 changes of the cage dimensions itself, I don't think</p> <p>13 anybody has said that this is equal to this or</p> <p>14 anything like that.</p> <p>15 (Deposition Exhibit 23 was marked for</p> <p>16 identification by the court reporter</p> <p>17 and is attached hereto.)</p> <p>18 BY MR. OLSON:</p> <p>19 Q Let me hand you what we've marked Bell 23.</p> <p>20 A Are you through with this one?</p> <p>21 Q Yes.</p> <p>22 This is Bates-stamped BELL-D-00028597</p> <p>23 through -28599.</p> <p>24 And why don't you briefly review the</p> <p>25 document and let us know when you're done.</p>	<p style="text-align: right;">238</p> <p>1 Do you see that?</p> <p>2 A Yes.</p> <p>3 Q But then when UEP adopted its guideline, it</p> <p>4 took out the "4 inches per bird," right?</p> <p>5 MR. TAKENOUCHI: Objection; foundation.</p> <p>6 THE WITNESS: That's what I recognized,</p> <p>7 yes.</p> <p>8 BY MR. OLSON:</p> <p>9 Q And then if you read the rest of this, does</p> <p>10 it refresh your recollection that under the UEP</p> <p>11 program that was implemented, it actually became a</p> <p>12 concern that feeder space was being reduced from</p> <p>13 what it was previously?</p> <p>14 A Up through the fourth paragraph -- fourth</p> <p>15 paragraph, we're progressing with time, so it is a</p> <p>16 chronological discussion up to that point. We</p> <p>17 haven't resolved -- well go ahead to the next</p> <p>18 paragraph.</p> <p>19 Q What the fourth paragraph says is the</p> <p>20 majority of cage equipment at the time of the</p> <p>21 program being introduced provided 2.8 inches of</p> <p>22 feeder space.</p> <p>23 A Yes.</p> <p>24 Q For 56 square inches.</p> <p>25 So that's less than 4 inches?</p>
<p style="text-align: right;">237</p> <p>1 A Are we only concerned about the feeder</p> <p>2 space at this point?</p> <p>3 Q No.</p> <p>4 A Go ahead and you can give it a try.</p> <p>5 Q Do you recall -- well, first can you</p> <p>6 identify this as a document that you prepared titled</p> <p>7 "Unresolved Animal Welfare Issues"?</p> <p>8 A I believe I did, but I don't see any</p> <p>9 indication of that.</p> <p>10 Q I can tell you that in the metadata that</p> <p>11 came with the documents it is indicated it is dated</p> <p>12 August 2004?</p> <p>13 A 2004?</p> <p>14 Q Yes.</p> <p>15 So there is a heading that says "Feeder</p> <p>16 Space."</p> <p>17 A Yes.</p> <p>18 Q And what this report says is the Scientific</p> <p>19 Advisory Committee wrote in their September 2000</p> <p>20 recommendations, which is the date of the document,</p> <p>21 the exhibit we've looked at previously, the</p> <p>22 following regarding feeder space, and that is that a</p> <p>23 minimum feeder space of 4 inches per bird should be</p> <p>24 allocated such that all birds can feed</p> <p>25 simultaneously.</p>	<p style="text-align: right;">239</p> <p>1 A That's correct.</p> <p>2 Q And the next paragraph says with the new</p> <p>3 cages that were being implemented, feeder space was</p> <p>4 actually being produced -- was actually being</p> <p>5 reduced and sometimes only providing 2.23 inches of</p> <p>6 feeder space, correct?</p> <p>7 MR. TAKENOUCHI: Objection to form.</p> <p>8 THE WITNESS: No, I don't see that in the</p> <p>9 fourth -- one, two, three, fourth paragraph.</p> <p>10 BY MR. OLSON:</p> <p>11 Q Fifth paragraph.</p> <p>12 A I'm on the fourth. We talked about going</p> <p>13 from 2.8 to 3.35. So that's during the transition</p> <p>14 period as you're increasing from 56 inches to 67.</p> <p>15 Q And that's what was -- that's what --</p> <p>16 A At that point we still haven't -- let me</p> <p>17 finish my thought.</p> <p>18 That hasn't gotten into the manufacturers</p> <p>19 reshaping the cage.</p> <p>20 Q All right. Now look at the next paragraph.</p> <p>21 A Okay. I understand that paragraph.</p> <p>22 Q All right. So the next one says that,</p> <p>23 actually, feeder space was being reduced under some</p> <p>24 of the cages that met the UEP guidelines.</p> <p>25 MR. TAKENOUCHI: Objection; form, no</p>

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<p style="text-align: right;">240</p> <p>1 question pending.</p> <p>2 BY MR. OLSON:</p> <p>3 Q Right?</p> <p>4 A They were heading in a direction away from</p> <p>5 where they were originally on feeder space.</p> <p>6 Q So on feeder space things were getting</p> <p>7 worse?</p> <p>8 A Not getting rosy.</p> <p>9 Q All right. Now, on cage configuration,</p> <p>10 that's the next topic of this document --</p> <p>11 A Okay. Got it.</p> <p>12 Q -- the scientific committee wrote that,</p> <p>13 "Cage configuration should be such that manure from</p> <p>14 birds in upper cage levels does not drop on birds in</p> <p>15 lower level cages."</p> <p>16 And that's --</p> <p>17 A Common sense.</p> <p>18 Q -- common sense from a welfare standpoint,</p> <p>19 right?</p> <p>20 A Yes.</p> <p>21 Q But what this lays out is that producers</p> <p>22 hadn't been meeting that recommendation under the</p> <p>23 program either, right?</p> <p>24 MR. TAKENOUCHI: Objection to form,</p> <p>25 leading, misstates the record.</p>	<p style="text-align: right;">242</p> <p>1 it's a different procedure that you can accomplish.</p> <p>2 I don't believe anybody has been shut down</p> <p>3 for his manure to be continuing to be dropping</p> <p>4 through on years 1, 2, 3, 4, 5 and 6.</p> <p>5 Q I don't either.</p> <p>6 Do you see the next heading, "Usable Floor</p> <p>7 Space and Cage Height"?</p> <p>8 A Let's see -- yes, yes.</p> <p>9 Q And this refers to what the Scientific</p> <p>10 Advisory Committee recommended about floor space and</p> <p>11 cage height. And I'll let you read that to</p> <p>12 yourself.</p> <p>13 A Go ahead. I understand.</p> <p>14 Q And then it says, "UEP adopted the</p> <p>15 following recommendation," and in doing so it took</p> <p>16 out two sentences of what the advisory committee</p> <p>17 recommended, didn't it?</p> <p>18 MR. TAKENOUCHI: Objection to form, lack of</p> <p>19 foundation.</p> <p>20 BY MR. OLSON:</p> <p>21 Q Well, and to be specific, the Scientific</p> <p>22 Advisory Committee referred to, "A cage height of 16</p> <p>23 to 17 inches generally being acceptable for small</p> <p>24 Leghorn strains, while larger strains will require</p> <p>25 taller cages."</p>
<p style="text-align: right;">241</p> <p>1 THE WITNESS: I never thought of this</p> <p>2 before, but the individual components saying that</p> <p>3 there is eight components or ten components of the</p> <p>4 guidelines, I assume that the timetable applies to</p> <p>5 all of them. No? How do you come to that</p> <p>6 conclusion?</p> <p>7 BY MR. OLSON:</p> <p>8 Q Well, we don't need to go back and forth on</p> <p>9 this.</p> <p>10 A Okay.</p> <p>11 Q But what this says is in June of 2004 there</p> <p>12 had been a recognition that producers had not</p> <p>13 followed that recommendation about manure dropping</p> <p>14 directly on birds in lower cages.</p> <p>15 A May I comment?</p> <p>16 Q Let's just state that's what this document</p> <p>17 indicates, right?</p> <p>18 A All right.</p> <p>19 Q What's your comment?</p> <p>20 A You do not have the ability to change</p> <p>21 overnight. If the cage house was designed that way,</p> <p>22 it's going to stay that way until you tear the house</p> <p>23 down.</p> <p>24 But on the bird density question, you can</p> <p>25 change that overnight by just removing a bird. So</p>	<p style="text-align: right;">243</p> <p>1 Do you see that?</p> <p>2 A I see it.</p> <p>3 Q And the UEP guidelines took that aspect</p> <p>4 out, right?</p> <p>5 MR. TAKENOUCHI: Objection to form.</p> <p>6 THE WITNESS: I believe they substituted</p> <p>7 "to stand comfortably upright." I don't see that --</p> <p>8 well, no, that's part of the advisory committee's</p> <p>9 also.</p> <p>10 So what was left out is what you just said,</p> <p>11 the cage height issue --</p> <p>12 BY MR. OLSON:</p> <p>13 Q And that being left out raised concerns as</p> <p>14 well from a welfare standpoint, right?</p> <p>15 MR. TAKENOUCHI: Objection to form, lack of</p> <p>16 personal knowledge.</p> <p>17 THE WITNESS: I'm not following what you're</p> <p>18 saying.</p> <p>19 BY MR. OLSON:</p> <p>20 Q We can move on. Do you see the section on</p> <p>21 the last page entitled "Back Filling"?</p> <p>22 A Yes.</p> <p>23 Q And it says, "When the original guidelines</p> <p>24 were written, backfilling was allowed only when</p> <p>25 unexpected starter pullets were grown."</p>

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<p>1 Do you see that?</p> <p>2 A I have no idea what that means.</p> <p>3 Q That's what I was going to ask. All right.</p> <p>4 You can put that aside.</p> <p>5 I need to take a break.</p> <p>6 Let's go off the record.</p> <p>7 THE VIDEOGRAPHER: The time is</p> <p>8 approximately 11:54 a.m., and we're going off the</p> <p>9 record.</p> <p>10 (Recess.)</p> <p>11 (Deposition Exhibit 24 was marked for</p> <p>12 identification by the court reporter</p> <p>13 and is attached hereto.)</p> <p>14 THE VIDEOGRAPHER: The time is</p> <p>15 approximately 1:10 p.m., and we're back on the</p> <p>16 record.</p> <p>17 BY MR. OLSON:</p> <p>18 Q Okay. Mr. Bell, I've handed you what has</p> <p>19 been marked Bell Exhibit 24. It is Bates-stamped</p> <p>20 UE0918791 through -796.</p> <p>21 I can see you flipping through the</p> <p>22 document. When you've had a brief chance to</p> <p>23 familiarize yourself with the document, please let</p> <p>24 me know.</p> <p>25 And I want to really focus, if I can, just</p>	<p>1 Q The next page, and it is in -93.</p> <p>2 A Third, "I recall."</p> <p>3 Q I would just like you to confirm that these</p> <p>4 were your words.</p> <p>5 It says, "I recall many years ago that we</p> <p>6 also recommended 72 square inches for cages. We</p> <p>7 also recommended against molting. Then, we</p> <p>8 suggested that molting gives better returns and now,</p> <p>9 under present economic conditions, we'll be</p> <p>10 emphasizing no-molt programs. Things change,</p> <p>11 assumptions need to be understood, economics plays a</p> <p>12 major role in all such decisions," and then it</p> <p>13 continues.</p> <p>14 Were those your words?</p> <p>15 A Yes.</p> <p>16 Q Okay. You can put that aside.</p> <p>17 (Deposition Exhibit 25 was marked for</p> <p>18 identification by the court reporter</p> <p>19 and is attached hereto.)</p> <p>20 BY MR. OLSON:</p> <p>21 Q Let me hand you what we marked Bell</p> <p>22 Exhibit 25.</p> <p>23 And this document was produced from your</p> <p>24 file. And, for the record, there is a Bates stamp</p> <p>25 at the bottom of the BELL-D-0002811.</p>
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<p>1 on one e-mail. This is going to be brief.</p> <p>2 A Go ahead.</p> <p>3 Q It is the one on the second page that is</p> <p>4 from Don Lucy Bell dated Friday, May 30th, 2008 at</p> <p>5 1:02 p.m.</p> <p>6 A Yes.</p> <p>7 Q Now, donlucybell@charter.net, is that your</p> <p>8 e-mail address?</p> <p>9 A That's our personal address, yes.</p> <p>10 Q That's one that you use?</p> <p>11 A Now a hundred percent.</p> <p>12 Q And so can you identify that e-mail as one</p> <p>13 you wrote and sent to Gene Gregory on May 30, 2008?</p> <p>14 A Yes, I wrote the individual -- part of</p> <p>15 this.</p> <p>16 MR. GODLSTEIN: By the way, before you ask</p> <p>17 another question, the noise next door, Don, is that</p> <p>18 distracting you?</p> <p>19 THE WITNESS: No.</p> <p>20 BY MR. OLSON:</p> <p>21 Q If it is, let us know.</p> <p>22 Now, I just want to look at the -- I</p> <p>23 believe it is the third full paragraph of your</p> <p>24 e-mail that starts "I recall."</p> <p>25 A What page?</p>	<p>1 And I would just like you to generally</p> <p>2 identify this document for us.</p> <p>3 A It appears to be a letter from Ken</p> <p>4 Koelkebeck at the University of Illinois to Gene</p> <p>5 relative to molting, non-feed withdrawal molting.</p> <p>6 Q And Mr. Koelkebeck had been involved in</p> <p>7 2002 doing research on the effectiveness of non-feed</p> <p>8 withdrawal molting; is that --</p> <p>9 A Yes.</p> <p>10 MR. TAKENOUCHI: Objection to form.</p> <p>11 BY MR. OLSON:</p> <p>12 Q And you were familiar with his research?</p> <p>13 A Yes.</p> <p>14 Q Let's just turn to page 18 of the research.</p> <p>15 That's the summary. There is the heading "Summary</p> <p>16 and Take Home Message."</p> <p>17 A Yes.</p> <p>18 Q And it begins -- well, actually, before we</p> <p>19 get there, at the bottom there is acknowledgement.</p> <p>20 It says, "The authors would like to thank Don Bell</p> <p>21 at the University of California, Robert Pierre,</p> <p>22 California Egg Commission, Dr. Mark Farmer, Sr., of</p> <p>23 Ridley Feed Ingredients, Inc., and Gene Gregory of</p> <p>24 United Egg Producers for their financial support" --</p> <p>25 A This is his letter and this is his</p>

24 (Pages 244 to 247)

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<p>1 acknowledgement.</p> <p>2 Q Right.</p> <p>3 A But I differentiate between my part of that</p> <p>4 acknowledgement and others.</p> <p>5 Q Okay. And do you know why you were being</p> <p>6 thanked?</p> <p>7 A Thanked for advice and literature and</p> <p>8 research.</p> <p>9 But it sounds like that I'm involved in the</p> <p>10 financial support.</p> <p>11 Q And you weren't?</p> <p>12 A No.</p> <p>13 Q Okay. So, to your understanding, he's</p> <p>14 thanking you for advice and --</p> <p>15 A Whatever -- yes.</p> <p>16 Q Okay. All right. Back to the "Summary and</p> <p>17 Take Home Message."</p> <p>18 A Okay.</p> <p>19 Q I'm going to read the first sentence. It</p> <p>20 says, "In summary, the results of this study</p> <p>21 indicate that feeding a wheat middlings diet, wheat</p> <p>22 middlings and corn combination diet, or corn gluten</p> <p>23 feed molt diet to initiate a molt in commercial</p> <p>24 layers may be effective alternative feeding programs</p> <p>25 compared to traditional feed removal methods."</p>	<p>1 under the antitrust laws?</p> <p>2 A Well, yes, in many of our manuscripts that</p> <p>3 we've gone through already, many ideas are</p> <p>4 submitted, many of the relationships are discussed.</p> <p>5 Most of it boils down to that we need to -- the</p> <p>6 industry -- excuse me for using the word "we."</p> <p>7 The industry needs to reduce the number of</p> <p>8 eggs they produce, especially during hard times.</p> <p>9 Q And did you have any discussions with</p> <p>10 Gene Gregory or Al Pope about whether there were any</p> <p>11 limits or prohibitions under the antitrust laws</p> <p>12 about what could be done to have the industry reduce</p> <p>13 the number of eggs that they produce?</p> <p>14 A I'm not an expert in laws about -- of that</p> <p>15 nature. We -- or I felt it was perfectly within my</p> <p>16 realm to be concerned about their economic</p> <p>17 well-being, and that this was a subject of managing</p> <p>18 the industry as opposed to managing the individual</p> <p>19 farm and that we were not doing anything illegal.</p> <p>20 Q And let me just try to focus you</p> <p>21 specifically on my question. I appreciate what --</p> <p>22 your efforts to be helpful, but just try to focus on</p> <p>23 this specific aspect.</p> <p>24 A Okay.</p> <p>25 Q I'm asking whether you recall specifically</p>
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<p>1 Do you see that?</p> <p>2 A Yes.</p> <p>3 Q Was that your understanding of the summary</p> <p>4 of the research that Mr. --</p> <p>5 A In his particular research --</p> <p>6 MR. TAKENOUCHI: Objection; lack of</p> <p>7 personal knowledge about whether he's reading it.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MR. OLSON:</p> <p>10 Q Okay. Thank you.</p> <p>11 Now, Mr. Bell, did you ever have</p> <p>12 discussions with Mr. Gregory -- that is,</p> <p>13 Gene Gregory -- or Al Pope about any limits on what</p> <p>14 could be done to manage supply in the United States</p> <p>15 under the antitrust laws?</p> <p>16 MR. TAKENOUCHI: Objection to form.</p> <p>17 THE WITNESS: First of all, there was an</p> <p>18 assumption that they were exempt because they were a</p> <p>19 cooperative. That's my assumption. I've never</p> <p>20 asked an attorney for their opinion about that</p> <p>21 question.</p> <p>22 BY MR. OLSON:</p> <p>23 Q And did you ever discuss with Gene Gregory</p> <p>24 or Al Pope whether there were any limits about what</p> <p>25 could be done to manage supply in the United States</p>	<p>1 anything Gene Gregory or Al Pope told you about</p> <p>2 limits on what could be done or things that could</p> <p>3 not be done?</p> <p>4 A No.</p> <p>5 Q And so this would include during the period</p> <p>6 you were on retainer by UEP to write your memos, you</p> <p>7 never received any guidance about what could be done</p> <p>8 or said under the antitrust laws?</p> <p>9 MR. TAKENOUCHI: Objection; misstates prior</p> <p>10 testimony. Objection to form.</p> <p>11 THE WITNESS: No discussion was ever made</p> <p>12 with me of the antitrust laws.</p> <p>13 BY MR. OLSON:</p> <p>14 Q Now, when you -- let's talk about the</p> <p>15 process of you preparing these memos while you were</p> <p>16 on retainer by UEP. We've seen that sometimes</p> <p>17 Mr. Gregory would suggest a topic for you, right?</p> <p>18 A Yes.</p> <p>19 Q Sometimes would you come up with a topic on</p> <p>20 your own?</p> <p>21 A 95 percent of the time, yes.</p> <p>22 Q And then when you finished the memo, what</p> <p>23 would you do?</p> <p>24 A I would e-mail it to Mr. Gregory.</p> <p>25 Q And would Mr. Gregory -- were there ever</p>

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<p style="text-align: right;">252</p> <p>1 times that Mr. Gregory wrote back to you and asked</p> <p>2 you to make changes in what you had prepared?</p> <p>3 A No.</p> <p>4 Q That never happened?</p> <p>5 A Not to my knowledge.</p> <p>6 (Deposition Exhibit 26 was marked for</p> <p>7 identification by the court reporter</p> <p>8 and is attached hereto.)</p> <p>9 BY MR. OLSON:</p> <p>10 Q Let me hand you what we've marked Bell 26.</p> <p>11 And why don't you take out Exhibit 15.</p> <p>12 A 1-5?</p> <p>13 Q Yes.</p> <p>14 A What do we have here, a new one?</p> <p>15 Q Yes.</p> <p>16 A You want to talk about that first?</p> <p>17 Q Pull out 15 and put that to the side, and</p> <p>18 I'd like you to look at what we've marked as 26.</p> <p>19 MR. TAKENOUCHI: Can we get the Bates</p> <p>20 number?</p> <p>21 MR. OLSON: Yes. The Bates -- Number 26 is</p> <p>22 UC_E00055875.</p> <p>23 Q Now, Mr. Bell, can you identify Bell 26 as</p> <p>24 an e-mail you received from Gene Gregory on April</p> <p>25 17th, 2002?</p>	<p style="text-align: right;">254</p> <p>1 A My draft that I would have sent him, this</p> <p>2 is a finished product.</p> <p>3 Q How can you tell it is a finished product?</p> <p>4 A It is what we are talking about. It is an</p> <p>5 evolution. I wrote something, he's giving comments</p> <p>6 about it and there must be a product.</p> <p>7 Did I respond to his suggestion?</p> <p>8 Q We haven't found that in your e-mails.</p> <p>9 A Okay.</p> <p>10 Q Do you know whether you did or not?</p> <p>11 A Let me look at the dates again. This is</p> <p>12 written on April 15 and he's come back on the 17th</p> <p>13 two days later and made his comments, and then what</p> <p>14 happened?</p> <p>15 Q That's what I was going to ask you.</p> <p>16 A I don't know -- I don't know what the -- he</p> <p>17 wanted me to respond.</p> <p>18 Do I have a response here? Here we go.</p> <p>19 No, that's not a response to that letter.</p> <p>20 There is a 16, but that's one day earlier.</p> <p>21 So do we have anything on the 18th or 19th</p> <p>22 that would say I disagree with you or that I prefer</p> <p>23 my own wording?</p> <p>24 Q We've looked. We haven't seen whether you</p> <p>25 did or not?</p>
<p style="text-align: right;">253</p> <p>1 A Yes.</p> <p>2 Q And Mr. Gregory is responding to an e-mail</p> <p>3 that you sent to him on April 16th, 2002 in which</p> <p>4 you had attached one of your economic memos; is that</p> <p>5 right?</p> <p>6 A Yes, yes.</p> <p>7 Q And that's the memo that's Exhibit 15,</p> <p>8 right?</p> <p>9 A Yes.</p> <p>10 Q And does Bell Exhibit 26 refresh your</p> <p>11 recollection about Mr. Gregory requesting that you</p> <p>12 make changes?</p> <p>13 A Yes. I interpreted that as editorial</p> <p>14 suggestions, not necessarily that I responded to</p> <p>15 that, but he was suggesting this.</p> <p>16 Q So in Bell Exhibit 26 Mr. Gregory is making</p> <p>17 a suggestion about changes in your economic memo in</p> <p>18 regard to your discussion of the -- what he calls</p> <p>19 UEP cage density reduction proposal.</p> <p>20 Do you see that?</p> <p>21 A Let me have a minute, please?</p> <p>22 Q Sure.</p> <p>23 A Do you have the original?</p> <p>24 Q I don't know if 15 is the original or not.</p> <p>25 Do you?</p>	<p style="text-align: right;">255</p> <p>1 A Okay.</p> <p>2 Q So let's back up a little bit.</p> <p>3 A Okay. Go ahead.</p> <p>4 Q For the sake of the record, what</p> <p>5 Mr. Gregory asks you to do is to make a change in</p> <p>6 how you discussed UEP's cage density reduction</p> <p>7 proposal, right?</p> <p>8 MR. TAKENOUCHI: Objection to form.</p> <p>9 THE WITNESS: That's the way I read it,</p> <p>10 yes.</p> <p>11 BY MR. OLSON:</p> <p>12 Q And he says that, "I would prefer that we</p> <p>13 focus upon these changes being animal husbandry</p> <p>14 guidelines, which results in increased space for</p> <p>15 hens," right?</p> <p>16 A That's what he says.</p> <p>17 Q And he says, "I don't want anyone to think</p> <p>18 of this as the supply reduction program, even though</p> <p>19 we know the effect will be the same in the short</p> <p>20 term," that's what he says, right?</p> <p>21 A That's what he says.</p> <p>22 Q And you, sitting here today, do you</p> <p>23 remember how you responded?</p> <p>24 A No, but I think I responded to you often</p> <p>25 enough here that I don't consider -- that I do</p>

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<p style="text-align: right;">256</p> <p>1 consider it an economic issue. And to separate 2 cause and effect which came first, the chicken or 3 the egg, and these questions, I'm just not sure how 4 to respond to you -- as a supply reduction program, 5 some people -- some people may have suggested this, 6 some people may have worked with this, some people 7 have -- may have voted for it, but in my role we 8 weren't working on welfare. 9 Q And do you -- 10 A Go ahead. 11 Q Did you have an understanding that 12 Gene Gregory was concerned about the program being 13 discussed as a supply reduction program? 14 MR. TAKENOUCHI: Objection; lack of 15 personal knowledge. 16 THE WITNESS: I think editor, and he is the 17 ultimate editor, because he has to put it out, would 18 be concerned about somebody's phraseology and 19 emphasis, degrees of emphasis relative to his own 20 emphasis. 21 I wrote it from my viewpoint, and it's not 22 perfect. So he apparently thought the tone or the 23 emphasis was somewhat controversial and wanted me to 24 reconsider it in his letter. 25 BY MR. OLSON:</p>	<p style="text-align: right;">258</p> <p>1 identification by the court reporter 2 and is attached hereto.) 3 BY MR. RAYLE: 4 Q I'll hand you a document, Exhibit 27 for 5 identification, and ask you to turn to page 26. The 6 last two digits of the Bates number is -26. 7 A Got you. 8 Go ahead. 9 MR. TAKENOUCHI: For the record, it is 10 Bates BELL-D-00000024. 11 MR. RAYLE: Thank you. 12 Q And particularly section 49-B? 13 A Go ahead. 14 Q Generally, can you identify what this 15 document is, sir? 16 A A chapter in the textbook. 17 Q And the name of the textbook is? 18 A "Commercial Meat" -- "Poultry, Meat and Egg 19 Production." 20 Q Thank you. 21 And did you author this particular -- 22 A I was the senior editor, and I authored 23 about a third of the book. 24 Q Okay. And in the third paragraph of 25 section 49-B, it starts out, "In the United States,</p>
<p style="text-align: right;">257</p> <p>1 Q Do you recall any other times that 2 Mr. Gregory warned you about how to characterize the 3 program? 4 MR. TAKENOUCHI: Objection to form, 5 misstates prior testimony. 6 THE WITNESS: Of all the correspondence 7 that we've had, I really can't recall anything 8 specific. 9 MR. OLSON: Okay. So at this point I'm 10 prepared to pass the witness on the understanding 11 that we've reserved some time today in case we need 12 it, hopefully we won't, but just in case we do, and 13 on the understanding that we have with Mr. Goldstein 14 that after we complete our review of the documents 15 that have been recently produced and are yet to be 16 produced, that we can come back for some amount of 17 time, additional time, that we'll discuss. 18 MR. GODLSTEIN: Agreed. 19 20 EXAMINATION 21 BY MR. RAYLE: 22 Q Good afternoon, sir, my name is Merrick 23 Rayle. As I told you earlier, I represent the 24 Indirect Purchaser Plaintiffs. 25 (Deposition Exhibit 27 was marked for</p>	<p style="text-align: right;">259</p> <p>1 United Egg Producers Association makes a strong 2 effort" -- that section right there -- 3 A Yes. 4 Q Down a little bit there is a -- I think the 5 last sentence of that paragraph reads, "Even though 6 the recommendations are not heeded by everyone, 7 generally it has enough impact on the nation's flock 8 size to result in higher egg prices for everyone." 9 Do you see that, sir? 10 A Yes. 11 Q Can you tell us what was meant by the 12 phrase "to result in higher egg prices for 13 everyone"? 14 A "To result in higher egg prices for 15 everyone"? 16 As I've indicated before, every egg affects 17 every other egg, and so microscopically one farm 18 increasing their flock by 100,000 chickens is going 19 to affect everybody else, because that's just more 20 eggs to sell. So I believe that is a true 21 statement. 22 Q And would you include in the phrase 23 "everyone," would that include any consumer who 24 purchases shell eggs from retail stores? 25 A Obviously, consumers pay more than farmers</p>

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<p>1 get. And so if the farmer is trying to cover his 2 costs and he tries to increase his price, who pays 3 for it? The consumer. 4 Q Thank you. You can put that aside, sir. 5 (Deposition Exhibit 28 was marked for 6 identification by the court reporter 7 and is attached hereto.) 8 BY MR. RAYLE: 9 Q This is the last exhibit, for me, at least. 10 Exhibit 28, for identification, is titled, 11 "U.S. Farm and Retail Price Relationships - 1982 to 12 2005." 13 Have I correctly read that, sir? 14 A Yes. 15 Q The Bates number is UE0155821 and it goes 16 through -831. 17 I'd ask you to turn, if you would, please, 18 to page 10 in the upper right-hand corner where the 19 Bates number ends in -30. 20 A 10 and what else? 21 Q The lower right-hand corner, the last three 22 numbers are -830. 23 A Yes. 24 Q First, can you identify what this document 25 is?</p>	<p>1 A I'm on the graph here. 2 Q No, the very first page. 3 A Oh, the very first page. 4 Go ahead. 5 Q The fifth paragraph, last sentence, "This 6 rather close agreement between the changes in price 7 between the two series indicates that retailers are 8 generally responding to changes in the marketplace 9 with comparable shelf prices changes." 10 Do you see that, sir? 11 A It is saying it is basically parallel. 12 MR. RAYLE: Nothing further, sir. 13 Thank you for your time and patience. 14 THE WITNESS: That's it? 15 MR. RAYLE: That's it. 16 THE WITNESS: Thank you, sir. 17 MR. RAYLE: Thank you. 18 MR. OLSON: Let's go off the record. 19 THE VIDEOGRAPHER: This concludes media 20 number 1 in the video deposition of Don Bell, Volume 21 II. The time is approximately 1:37 p.m., and we are 22 going off the record. 23 (Recess.) 24 THE VIDEOGRAPHER: This marks the beginning 25 of media number 2 in the video deposition of</p>
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<p>1 A This page or the entire document? 2 Q The entire document. 3 A This was the subject of a speech I gave -- 4 I'm not sure where, I usually don't put that down -- 5 on the subject of marketing. 6 Q Under -- sorry. 7 A My sources for U.S. farm prices are 8 different than my sources for retailing prices. I 9 believe I indicate sources somewhere. 10 Q On -- 11 A The emphasis of this article is how the 12 differences are changing. 13 Q All right. Under the category "General 14 Conclusions," there are four bullets there. 15 A Yes. 16 Q And then under that is written, "The 17 increases in spread between farm prices and retail 18 prices appears to be a permanent change." 19 Do you see that, sir? 20 A Oh, you're down in the bottom now? 21 Q Yes, sir. 22 A It's a true statement. 23 Q Thank you. 24 Now, go to the very first page, fifth 25 paragraph, last sentence.</p>	<p>1 Don Bell, Volume II. The time is approximately 1:51 2 p.m., and we're back on the record. 3 4 EXAMINATION 5 BY MR. TAKENOUCHI: 6 Q Good afternoon, Mr. Bell. Thanks for 7 taking the time out of your day for this. 8 My name is Jason Takenouchi. I'm here on 9 behalf of Nu-Cal Foods. I'm going to ask you some 10 questions to try and clarify some of your testimony 11 from today and also from yesterday. And there are 12 also some other areas we'll talk about. 13 A Fine. 14 Q Now initially I'm going to go through a few 15 documents you've already seen and just ask you some 16 follow-up questions. 17 If at any point you need to take a break, 18 please let me know. 19 Is there any reason you can't give your -- 20 continue to give your full and fair and complete 21 testimony today? 22 A I didn't quite hear that. 23 Q Is there any reason you can't give your 24 full and complete -- 25 A No, there isn't.</p>

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<p>1 Q -- testimony today?</p> <p>2 A No, I'm fine.</p> <p>3 Q Okay. Look at Bell 17. And the Bates</p> <p>4 number on the first page is CM430620. I think it is</p> <p>5 in front of you.</p> <p>6 A Yes.</p> <p>7 Q I think your questions earlier about an</p> <p>8 editorial that's in the middle of that packet there,</p> <p>9 the Bates number is -630 at the end --</p> <p>10 A Yes.</p> <p>11 Q It is the one that says the reasons why.</p> <p>12 Now, if you look on there, a little below the middle</p> <p>13 part of the page, do you see a paragraph starting</p> <p>14 "UEP's Animal Husbandry Guidelines"?</p> <p>15 A Yes.</p> <p>16 Q Could you read that first sentence there?</p> <p>17 A "UEP's animal husbandry guidelines were</p> <p>18 never intended as a supply management program."</p> <p>19 Q Okay. Now, I think when you were</p> <p>20 questioned about that before you weren't paying</p> <p>21 attention to some other language there, but for that</p> <p>22 particular portion of that sentence, did you</p> <p>23 understand that to be the case?</p> <p>24 A That was what I understand to be our</p> <p>25 mission as a committee.</p>	<p>1 Is this your question?</p> <p>2 Q Yes.</p> <p>3 A Yes. And that's why the committee on</p> <p>4 animal welfare, Scientific Advisory Committee for</p> <p>5 animal welfare, we placed as much emphasis as they</p> <p>6 did on the question of cage density.</p> <p>7 Q Now, is this knowledge about the benefits</p> <p>8 of cage density, was this something that only</p> <p>9 happened in the 2000 time frame or was this</p> <p>10 something that there was research on before 2000?</p> <p>11 MR. OLSON: Objection to form.</p> <p>12 THE WITNESS: I started my research in</p> <p>13 about 1960 on cage density, and over time you still</p> <p>14 see people researching this question.</p> <p>15 The current issue is very difficult to</p> <p>16 scientifically address.</p> <p>17 BY MR. TAKENOUCHI:</p> <p>18 Q But before 2000, had there been research on</p> <p>19 the benefits of cage density?</p> <p>20 A Oh, yes, much research.</p> <p>21 Q And were you aware of that research?</p> <p>22 A Oh, yes.</p> <p>23 Q Do you know why cage density came up in the</p> <p>24 context of the Scientific Advisory Committee's work?</p> <p>25 A Like I indicated, because of its impact on</p>
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<p>1 Q Okay. So this statement here was</p> <p>2 consistent with what your understanding of the</p> <p>3 mission was?</p> <p>4 A Yes.</p> <p>5 MR. OLSON: Objection to form.</p> <p>6 BY MR. TAKENOUCHI:</p> <p>7 Q And when you say, "our mission as a</p> <p>8 committee," what do you mean?</p> <p>9 A The committee's mission that they were</p> <p>10 requested to study and recommend was not a supply</p> <p>11 management program, but, instead, it was an animal</p> <p>12 welfare committee, and that's what we emphasized.</p> <p>13 Q And you're referring to the Scientific</p> <p>14 Advisory Committee, correct?</p> <p>15 A Yes.</p> <p>16 Q Are there any animal welfare benefits to</p> <p>17 reduce the cage density?</p> <p>18 A Yes.</p> <p>19 Q And what are those?</p> <p>20 A Chickens would have -- would produce less</p> <p>21 eggs at more dense conditions. They will die at a</p> <p>22 higher rate, they will crack more eggs. They will</p> <p>23 have more health problems, as they are crowded, and</p> <p>24 they may pick at each other more if they are</p> <p>25 crowded.</p>	<p>1 the welfare of the chickens. The research -- I</p> <p>2 listed half a dozen right now, reasons, and the</p> <p>3 drive behind the committee's formation was the</p> <p>4 result of the humane society's concern about animal</p> <p>5 welfare. And that was the pressure, tens of</p> <p>6 thousands of dollars were being spent to argue their</p> <p>7 point, the humane society, as well as United Egg</p> <p>8 Producers. It had to be resolved, and it still has</p> <p>9 to be resolved.</p> <p>10 Q Around that time were there other entities</p> <p>11 that were making changes or demanding changes about</p> <p>12 animal welfare?</p> <p>13 A There's just a list as long as your arm of</p> <p>14 activist organizations that are promoting animal</p> <p>15 welfare as they interpret it. Some of it may</p> <p>16 emphasize cages, some of it may emphasize molting,</p> <p>17 some may emphasize beak trimming, some of it</p> <p>18 just they don't like animals to be used. That's a</p> <p>19 very big problem.</p> <p>20 Q And was this an issue back in 2000, 1999?</p> <p>21 A Yes, it was. Yes, it was.</p> <p>22 MR. GODLSTEIN: Don, if you could just try</p> <p>23 to remember with Jason, as you did with Steig, to</p> <p>24 let him get his full question out before you begin</p> <p>25 to answer.</p>

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<p>1 THE WITNESS: I'm sorry.</p> <p>2 MR. OLSON: And even if you would give me a</p> <p>3 pause in case I have an objection, that would be</p> <p>4 great too.</p> <p>5 BY MR. TAKENOUCHI:</p> <p>6 Q You can put that away for now, and let's</p> <p>7 look at Bell 16.</p> <p>8 A 16?</p> <p>9 Q Yes.</p> <p>10 This is Bates number UE135717 on the first</p> <p>11 page.</p> <p>12 I think you were asked a little bit -- you</p> <p>13 were questioned a little bit about this document.</p> <p>14 The first part of it is United Voices and the second</p> <p>15 part looks like a copy of commentary you did in</p> <p>16 2002.</p> <p>17 A Yes.</p> <p>18 Q Okay. So looking at your commentary in</p> <p>19 2002 --</p> <p>20 A Yes.</p> <p>21 Q -- I just wanted to draw your attention to</p> <p>22 the fourth page here, the second -- the fourth page.</p> <p>23 A I have the fourth page now.</p> <p>24 Q It has the comments on the bottom there?</p> <p>25 A Comments, yes.</p>	<p>1 then until now.</p> <p>2 And so if you want to see current, we'll</p> <p>3 say, 2007, '8, '9, '10, and so on, that those</p> <p>4 documents may not be in there.</p> <p>5 Q Okay. So looking a back at this particular</p> <p>6 report from July of 2002, do you believe this report</p> <p>7 was on the website?</p> <p>8 MR. OLSON: Objection to form.</p> <p>9 THE WITNESS: 2002? It would be under a</p> <p>10 memo, and I guess Dr. Ernst would have considered</p> <p>11 that a newsletter, and so there is a heading</p> <p>12 "Newsletters." And then there is all the names of</p> <p>13 all of our newsletters, there may be six or eight</p> <p>14 different newsletters that we write.</p> <p>15 I do not know for sure whether he would</p> <p>16 include memos or not.</p> <p>17 BY MR. TAKENOUCHI:</p> <p>18 Q Okay. It's possible?</p> <p>19 MR. OLSON: Objection to form.</p> <p>20 THE WITNESS: I think strongly possible,</p> <p>21 yes, but it was his decision. These are all</p> <p>22 original, so I assume he would have thought they</p> <p>23 should be on the website.</p> <p>24 BY MR. TAKENOUCHI:</p> <p>25 Q And you say you promoted this website,</p>
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<p>1 Q Underneath that comments section there is a</p> <p>2 website address, animalscience.ucdavis.edu/avian.</p> <p>3 A Yes.</p> <p>4 Q What is that?</p> <p>5 A It's a website.</p> <p>6 Q Do you know what website that is?</p> <p>7 A Avian sciences, all relating to poultry.</p> <p>8 Q And how are you familiar with that website?</p> <p>9 A I contribute to it, I promote it. It's our</p> <p>10 communication tools of computer literate clients.</p> <p>11 Q And what, exactly, is on that website?</p> <p>12 A Everything on poultry -- turkeys, broilers,</p> <p>13 eggs, hatchery, feed, management, disease, et</p> <p>14 cetera, et cetera, et cetera.</p> <p>15 Q So are reports like this one on the</p> <p>16 website?</p> <p>17 A I believe the memos -- is that what we're</p> <p>18 talking about, this memo?</p> <p>19 Q This here.</p> <p>20 A I believe it is on there, I can't swear to</p> <p>21 it. The website was basically retired when</p> <p>22 Dr. Ernst, who controlled the website, retired about</p> <p>23 five or seven years ago.</p> <p>24 It was updated, I noticed, by somebody, and</p> <p>25 I hadn't figured out who, maybe once or twice since</p>	<p>1 correct?</p> <p>2 A In our newsletters, this statement right</p> <p>3 there is promoting it.</p> <p>4 Q Did you promote it in any other ways?</p> <p>5 A With this particular letter here every</p> <p>6 time, I would write an article from time to time</p> <p>7 saying why you should get into our website, what are</p> <p>8 the subjects on our website. I would feel there</p> <p>9 is -- we've communicated enough times that people</p> <p>10 would know that it exists, but it exists with 20 or</p> <p>11 30 or 50 other websites in poultry that are produced</p> <p>12 by other universities and so on.</p> <p>13 Q Okay. Now, looking at this document the</p> <p>14 first part is the United Voices newsletter and the</p> <p>15 second part --</p> <p>16 A Yes.</p> <p>17 Q -- is your memo.</p> <p>18 Now, this did not come from your</p> <p>19 production.</p> <p>20 Do you have any basis to believe that your</p> <p>21 memo was distributed to people along with this</p> <p>22 United Voices newsletter attached?</p> <p>23 A I do not know why it is attached here with</p> <p>24 a staple unless it was.</p> <p>25 It was -- at the top "Don Bell's</p>

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<p>1 newsletter," right there, so it was sent to 2 everybody on their mailing list that gets the United 3 Voices. 4 Q Well, did you receive a copy of United 5 Voices attaching your report to it? 6 A Well, I assume I did if everyone else did. 7 Q Okay. Do you remember getting that? As 8 you sit here today, do you remember getting a copy 9 of your report attached to United Voices? 10 A I cannot specifically if I got the one 11 dated July 29, 2002, specifically. 12 Q Okay. 13 A But I do get all of their newsletters. 14 Q Yeah, I understand that. 15 I want to show you -- referring back to -- 16 take a look at Bell 19. This is Bates-numbered UE 17 880125. 18 And this is another -- it's a commentary 19 you wrote in March 2004. 20 A Yes. 21 Q Do you remember being asked about this 22 earlier today? 23 A Yes. Yes, we talked about it. 24 Q And so on here, on the last page here, 25 there, again, is that same website.</p>	<p>1 A Let me read that here. 2 There's about 20 to 30 egg price changes a 3 year in the nation. Half of them -- 4 Q Let's look -- go ahead. 5 A Half of them go up and half of them go 6 down. 7 Now you're asking specifically 2004? 8 Q The period after this, mid to late 2004 9 going into 2005, was there a price trend in that 10 period that you recall? 11 MR. OLSON: Objection to form. 12 THE WITNESS: Well, this time is right 13 after the avian influenza problem on the East Coast 14 where 2 million birds, I believe, were disposed or 15 killed. That, in itself, raised the price of eggs 16 for the next year or two for the nation. 17 After that was over with and production 18 came back to normal, the rest of the nation took 19 their retail egg prices down to where it was. 20 California left it where it was because they had 21 shown that that pricing policy that they used at 22 that time was effective. 23 BY MR. TAKENOUCHI: 24 Q So after the avian influenza in effect in 25 2004, prices dropped again?</p>
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<p>1 Do you see that? 2 A Yes, yes it is. 3 Q And it says, "New items are added monthly." 4 Do you see that language? 5 A Yes. 6 Q Do you think this memo was on the website? 7 MR. OLSON: Objection; form. 8 THE WITNESS: If it was on the website, it 9 would be under newsletters and not under new items. 10 New items refers to miscellaneous things. 11 BY MR. TAKENOUCHI: 12 Q Do you see any reason why this newsletter 13 won't have been on the website? 14 MR. OLSON: Objection to form. 15 THE WITNESS: Well, it is one of the 16 series, I don't know how many we wrote altogether, 17 but I don't know if he would be selective in leaving 18 things out or putting things in, I don't know. I 19 don't know that. 20 BY MR. TAKENOUCHI: 21 Q Okay. So this memo talks about some egg 22 prices around this time in March 2004? 23 A Yes. 24 Q After March 2004, was there a change in egg 25 prices?</p>	<p>1 MR. TAKENOUCHI: Objection to form. 2 THE WITNESS: But not in California. 3 BY MR. TAKENOUCHI: 4 Q Except in California. 5 MR. OLSON: Same objection. 6 BY MR. TAKENOUCHI: 7 Q Go ahead and put that aside. 8 If you could pull out Bell 27. And I 9 believe you testified this was a chapter of a book 10 you wrote -- 11 A Yes. 12 Q -- you wrote this chapter in a book? 13 A Yes. 14 Q Was this book publicly available? 15 A Oh, yes, if you could afford it. 16 Q Did you write this for any particular 17 client? 18 A No. This is an exercise that those of us 19 in academia, the need to publish or perish, you 20 know. Occasionally you write a book or chapter of a 21 book and the -- the predecessor -- I think this was 22 the 5th edition of this book, by the way. It was 23 started by another individual back in the '70s, I 24 think, and then this is the 5th edition. This is 25 the first edition that had any pictures -- is there</p>

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<p style="text-align: right;">276</p> <p>1 any pictures in that? I don't see any pictures.</p> <p>2 Anyway, this is a 1,400 page book. The</p> <p>3 previous one, I think, was around 7- or 800. And we</p> <p>4 brought in 18 authors, total, including myself, as</p> <p>5 opposed to one.</p> <p>6 And so what we were trying to do here is be</p> <p>7 more comprehensive, get more opinions, more subject</p> <p>8 specialization. I think we have 52 chapters, each</p> <p>9 one on a different subject.</p> <p>10 Q So this was an academic exercise as opposed</p> <p>11 to something you wrote for a particular entity or</p> <p>12 person; is that correct?</p> <p>13 MR. OLSON: Objection to form.</p> <p>14 THE WITNESS: It was a continuation of a</p> <p>15 book that had been in existence for 30 years or so.</p> <p>16 So when the publisher comes to you and</p> <p>17 says, "Will you update this book?" you try to fight</p> <p>18 that as much as you can, and then finally you agree,</p> <p>19 but you're going to do it in a different way, you're</p> <p>20 going to change the name of the book, you're going</p> <p>21 to get your coauthors, you're going to make the book</p> <p>22 bigger and more comprehensive. And as editor --</p> <p>23 senior editor, all those differentiations were put</p> <p>24 into place.</p> <p>25 BY MR. TAKENOUCHI:</p>	<p style="text-align: right;">278</p> <p>1 A He sells them to a -- either he has his own</p> <p>2 processing plant or he sells them to the distributor</p> <p>3 who does the processing.</p> <p>4 So you have to tack on the processing costs</p> <p>5 to this price. This is the price I'm most familiar</p> <p>6 with. It is called the production price. It does</p> <p>7 not include processing, it does not include an egg</p> <p>8 carton, it does not include transportation, it does</p> <p>9 not include shelving or retailing. So these other</p> <p>10 costs that I just tried to list here that can go all</p> <p>11 the way to specialty eggs.</p> <p>12 Q Now, I think you said the focus of your</p> <p>13 work was on the farmer, the producer price?</p> <p>14 A That's right.</p> <p>15 Q Did you -- strike that.</p> <p>16 A Uh-huh.</p> <p>17 Q Go ahead and put that aside, and let's talk</p> <p>18 about Bell 22, Bates number BELL-D-28597.</p> <p>19 Do you remember being questioned about</p> <p>20 this?</p> <p>21 A Today or yesterday, yes.</p> <p>22 Q Okay. Now, at the time when the Scientific</p> <p>23 Advisory Committee was looking at feeder space</p> <p>24 issues, how old was the research that the committee</p> <p>25 was using in doing its analysis?</p>
<p style="text-align: right;">277</p> <p>1 Q I think when you were asked earlier about</p> <p>2 this particular book and some of the phrases in</p> <p>3 here, you talked about pricing.</p> <p>4 Are there different levels of pricing, you</p> <p>5 said?</p> <p>6 A Absolutely.</p> <p>7 Q Okay. And are those different levels?</p> <p>8 A Way more than you can add up. You have to</p> <p>9 read one of my papers on pricing.</p> <p>10 Q Are you trying to sell me a paper?</p> <p>11 A No. There is an encyclopedia that you can</p> <p>12 read the whole chapter on pricing that I wrote and</p> <p>13 one on marketing.</p> <p>14 But, anyway, they start with the base price</p> <p>15 that the farmer gets for given egg size, weight. So</p> <p>16 you start off with a peewee egg, which is the</p> <p>17 smallest egg we sell. At the farm level that price</p> <p>18 may be 10, 15 cents a dozen. But you don't sell</p> <p>19 them to the consumer, you sell them bulk or</p> <p>20 whatever.</p> <p>21 And then you get six sizes altogether, all</p> <p>22 the way up to extra large -- jumbo, pardon me. Each</p> <p>23 one of those has a different price, you get more</p> <p>24 weight with each one. That's at the farm level.</p> <p>25 Q Okay.</p>	<p style="text-align: right;">279</p> <p>1 A How old was the research --</p> <p>2 Q The research.</p> <p>3 A -- that they were considering?</p> <p>4 I think my paper, written in '76 or so,</p> <p>5 you'd have to go to the bibliography to find out.</p> <p>6 But that was the one that stimulated the discussion</p> <p>7 of more feeder space systems. It had a biological</p> <p>8 benefit, performance wise and economic, but the</p> <p>9 industry went so far with their adoption of this</p> <p>10 procedure and we went all the way to 6 inches, by</p> <p>11 the way, and then they started to experience it, and</p> <p>12 most of the experience was positive on the</p> <p>13 biological.</p> <p>14 But when they started to pencil it out</p> <p>15 economically, they said, well I have to buy 2 more</p> <p>16 inches of feeder space, that's feed trough. That</p> <p>17 costs money.</p> <p>18 Q I'm just focusing on --</p> <p>19 MR. OLSON: Hold on. Were you finished?</p> <p>20 THE WITNESS: What do you want?</p> <p>21 MR. OLSON: Oh, I thought you were still</p> <p>22 continuing with your answer.</p> <p>23 THE WITNESS: Well, I was.</p> <p>24 MR. OLSON: I thought so too.</p> <p>25 BY MR. TAKENOUCHI:</p>

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<p style="text-align: right;">280</p> <p>1 Q Just focusing on this period in 2004, if I</p> <p>2 could refer you to that heading "Scientific Studies</p> <p>3 on Feeder Space" --</p> <p>4 A Yes, go ahead.</p> <p>5 Q -- do you see that sentence in the middle</p> <p>6 there, "They confirmed that most of the research was</p> <p>7 more than 20 years old"?</p> <p>8 A Yes.</p> <p>9 Q Do you see that?</p> <p>10 A Yes.</p> <p>11 Q So it said, "They confirmed that most of</p> <p>12 the research was more than 20 years old and that</p> <p>13 genetics and production practices had certainly</p> <p>14 changed since the last research project."</p> <p>15 So at this point in 2004, was the research</p> <p>16 on feeder space outdated?</p> <p>17 MR. OLSON: Objection to form.</p> <p>18 THE WITNESS: I would have problems with</p> <p>19 this no research for 20 years, something like that.</p> <p>20 "They confirmed most of the research was more than</p> <p>21 20 years old."</p> <p>22 I have files of research after my original</p> <p>23 research that confirmed our results, and I don't</p> <p>24 consider that none.</p> <p>25 BY MR. TAKENOUCHI:</p>	<p style="text-align: right;">282</p> <p>1 and so on.</p> <p>2 And all these factors -- the feeder space,</p> <p>3 the water, the height, the depth, the shape -- this</p> <p>4 is a regular cage shaped like that. The reverse</p> <p>5 cage is shaped like that. And so the feeder trough</p> <p>6 is here, now it's here. So shape is a big important</p> <p>7 thing.</p> <p>8 So three or four or five elements of</p> <p>9 describing a cage, and they all fit together. They</p> <p>10 all have a role.</p> <p>11 Q You're talking about cage configuration and</p> <p>12 design, right?</p> <p>13 A Go ahead.</p> <p>14 Q But I guess what I'm asking about is the</p> <p>15 distinction between hen density and I guess cage</p> <p>16 density versus the hen population.</p> <p>17 Are those different concepts?</p> <p>18 A Well, the first two that you mentioned, hen</p> <p>19 density and cage density, I think would be the</p> <p>20 same --</p> <p>21 Q Okay.</p> <p>22 A -- they are just synonymous.</p> <p>23 The population is a totally different</p> <p>24 thing. It is how many birds, not in one cage.</p> <p>25 The rest of it has to do with how many</p>
<p style="text-align: right;">281</p> <p>1 Q Okay. And your original research was 1976;</p> <p>2 is that right?</p> <p>3 A I think that's the date I had. It's in all</p> <p>4 of my documents someplace.</p> <p>5 Q I think you testified yesterday about hen</p> <p>6 density.</p> <p>7 A Yes.</p> <p>8 Q And I can't remember if you testified about</p> <p>9 hen population.</p> <p>10 Do you remember that?</p> <p>11 A I'm sure we said something about total hen</p> <p>12 numbers versus birds in a cage, I'm sure we talked</p> <p>13 about that.</p> <p>14 Q So what's the difference, if there is any,</p> <p>15 between hen density and hen population?</p> <p>16 A Well, hen population you are talking about</p> <p>17 a farm or a state or a region or a country. That's</p> <p>18 the total numbers of birds in that definition.</p> <p>19 Density, it usually refers to in a given</p> <p>20 unit or given enclosure -- enclosure is probably a</p> <p>21 better word. Humane people don't like the word</p> <p>22 cages, by the way. And cages have been around since</p> <p>23 the '30s, the 1930s.</p> <p>24 But anyway, density refers to how much</p> <p>25 space they have and how many birds are in that unit</p>	<p style="text-align: right;">283</p> <p>1 birds you put in here and how dense are they and the</p> <p>2 space, whatever the size is, that's an enclosure.</p> <p>3 It could be as few as three or four birds,</p> <p>4 it could be as many as 50 to a hundred. But that's</p> <p>5 density.</p> <p>6 But population is how many of these do you</p> <p>7 have all over the place. And you are counting for</p> <p>8 five birds here, five birds there, five birds there,</p> <p>9 five birds there, all over the United States.</p> <p>10 Q Now, I think you testified earlier about</p> <p>11 some of the benefits of giving hens more space?</p> <p>12 A Yes.</p> <p>13 Q And I think you said something about</p> <p>14 productivity.</p> <p>15 Do you remember that?</p> <p>16 A Productivity means eggs.</p> <p>17 Q Okay. So how does giving hens more space</p> <p>18 result in more eggs?</p> <p>19 MR. OLSON: Objection to form.</p> <p>20 THE WITNESS: It is their response to being</p> <p>21 crowded. What's the total length of time? Normally</p> <p>22 there is good evidence in the 50- to 80-square-inch</p> <p>23 range per bird that there is a step-by-step</p> <p>24 regression relationship in that question, so -- have</p> <p>25 I answered your question yet or do you want to</p>

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<p>1 restate it?</p> <p>2 BY MR. TAKENOUCHI:</p> <p>3 Q Okay. I'll restate it.</p> <p>4 Does giving hens more space result in more</p> <p>5 eggs?</p> <p>6 MR. OLSON: Objection to form.</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MR. TAKENOUCHI:</p> <p>9 Q And how, exactly, does it --</p> <p>10 A How does it happen?</p> <p>11 Q Yes.</p> <p>12 A It is part of the peck order, which is a</p> <p>13 sociological phenomena, that relates to chicken or</p> <p>14 people, or whatever. It relates to access to the</p> <p>15 feed and to the water. It relates to -- I think</p> <p>16 that's enough.</p> <p>17 Q So let me refer you to Bell 9. I think it</p> <p>18 was yesterday.</p> <p>19 The Bates number is BELL 4041, and this is</p> <p>20 a December 22nd, 1999 e-mail.</p> <p>21 I want to draw your attention to the second</p> <p>22 page here.</p> <p>23 A Second page?</p> <p>24 Q You testified to some of this yesterday.</p> <p>25 But that second-to-the-last paragraph there, and the</p>	<p>1 A Yes.</p> <p>2 Q Do you think that's when you produced this</p> <p>3 or created this slide --</p> <p>4 MR. OLSON: Objection to form.</p> <p>5 THE WITNESS: It looks like I didn't -- oh,</p> <p>6 here it is up here, in the title it says 1992.</p> <p>7 January 1992. Down here it was just substantiation</p> <p>8 of the date. Up at the top corner you'll see a</p> <p>9 handwritten 92/12.</p> <p>10 BY MR. TAKENOUCHI:</p> <p>11 Q So do you think you wrote this in 1992?</p> <p>12 A Well, it looks like 12 would be December,</p> <p>13 maybe, of '92. I don't know what the 12 is. I</p> <p>14 really don't. They have January '92 and over here</p> <p>15 you've got 12. I don't know what the difference is.</p> <p>16 Q Do you think you wrote this in 1992?</p> <p>17 A Yes, 1992 is definitely --</p> <p>18 Q So 1992 was 21 years ago, roughly?</p> <p>19 MR. OLSON: Objection to form.</p> <p>20 BY MR. TAKENOUCHI:</p> <p>21 Q Do you remember creating this particular</p> <p>22 slide?</p> <p>23 A I gave many talks on this subject. I gave</p> <p>24 over 450 talks in my career. It is very difficult</p> <p>25 to remember which one is which.</p>
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<p>1 last sentence of that paragraph, it says, "What</p> <p>2 would be real exciting would be to see entire new</p> <p>3 complexes built on these principles."</p> <p>4 Do you remember what you meant by that?</p> <p>5 A Sure. Yeah, it's basically -- it would be</p> <p>6 exciting if everybody listened to me and did what I</p> <p>7 said, that would be the most exciting things. So if</p> <p>8 I've said I've done research on reverse cages, for</p> <p>9 example, or molting or any of these things, if</p> <p>10 everybody read it, everybody followed it through,</p> <p>11 that would be very exciting to me.</p> <p>12 Q Go ahead and put that away. I understand</p> <p>13 what you're saying.</p> <p>14 A You understand what I'm saying?</p> <p>15 Q Let's look at Bell 2 for a second. This is</p> <p>16 Bates number BELL-D-31284. We looked at this</p> <p>17 yesterday.</p> <p>18 A Got it. Go ahead.</p> <p>19 Q It is a slide. It looks like it is</p> <p>20 PowerPoint or something.</p> <p>21 A I've given the slide talks all my life, so</p> <p>22 I suppose so -- it looks like PowerPoint.</p> <p>23 Q Okay. So the first page there has a date</p> <p>24 of 1992.</p> <p>25 Do you see that?</p>	<p>1 This is in my own documentation at my</p> <p>2 house.</p> <p>3 Q Okay. Do you remember sitting down 21</p> <p>4 years ago and creating this?</p> <p>5 A No, no. This could have been in any</p> <p>6 location, and we'll assume '92 is correct.</p> <p>7 Q Do you remember giving this particular</p> <p>8 presentation or copy of this to any particular</p> <p>9 person?</p> <p>10 A I might have given this to five different</p> <p>11 groups, so I don't know right today what group this</p> <p>12 was given to first, second, third, fourth or fifth.</p> <p>13 Q Let's say there were five, do you know</p> <p>14 which five groups you may have given it to?</p> <p>15 A I do --</p> <p>16 MR. OLSON: Hold on. Objection to form.</p> <p>17 THE WITNESS: I have it in my records every</p> <p>18 single talk I've ever given at my house. It does</p> <p>19 not say it on this document.</p> <p>20 BY MR. TAKENOUCHI:</p> <p>21 Q So sitting here today you don't have</p> <p>22 independent recollection who you may have given this</p> <p>23 to?</p> <p>24 A I have no idea.</p> <p>25 Q Is it possible you never gave this to</p>

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<p>1 anyone at UEP?</p> <p>2 MR. OLSON: Objection to form.</p> <p>3 THE WITNESS: Say that again.</p> <p>4 BY MR. TAKENOUCHI:</p> <p>5 Q Is it possible you never gave this slide to</p> <p>6 anyone at UEP?</p> <p>7 A It's possible, it's possible.</p> <p>8 Q So apologies for going backwards, but let's</p> <p>9 look at Bell 21 and also Bell 22. If you could have</p> <p>10 those two in front of you?</p> <p>11 A 21 and 22.</p> <p>12 Q These are minutes of, it looks like,</p> <p>13 different meetings in 2004?</p> <p>14 A Yes.</p> <p>15 Q If you look in the bottom right of both</p> <p>16 these documents there is a Bates number which is</p> <p>17 fancy speak for a numbering system to show who</p> <p>18 produced it. And these are both produced by United</p> <p>19 Egg.</p> <p>20 Do you see that?</p> <p>21 A They were provided by United Egg?</p> <p>22 Q Yes, United Egg.</p> <p>23 Do you see that?</p> <p>24 A Go ahead.</p> <p>25 Q I think you testified before you may have</p>	<p>1 question --</p> <p>2 A It is? Where is my name? There it is.</p> <p>3 Okay.</p> <p>4 Q Sitting here today, do you remember getting</p> <p>5 a copy of these minutes?</p> <p>6 A No, I don't remember specifically getting</p> <p>7 stacks of paper, no.</p> <p>8 Q And you wouldn't have created these</p> <p>9 minutes, right?</p> <p>10 A I did not create it.</p> <p>11 Q Okay. And now going to Bell 22 --</p> <p>12 A May we stay with 21 for a minute?</p> <p>13 Q Sure.</p> <p>14 A If this is nine years ago -- is that right?</p> <p>15 Nine years ago? -- I believe I was asked to give a</p> <p>16 talk on a -- on a subject, and I don't want to tell</p> <p>17 you the subject because I'm not sure, but I think</p> <p>18 that's why I was invited in the first place, not for</p> <p>19 any other reason.</p> <p>20 Q Okay. So looking at Bell 22 now --</p> <p>21 A Uh-huh.</p> <p>22 Q -- now again, this is Bates number</p> <p>23 UE294465 --</p> <p>24 A Yes.</p> <p>25 Q -- sitting here today do you remember</p>
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<p>1 attended these meetings?</p> <p>2 A I did. I think my name is on the list.</p> <p>3 Q Okay. It's on the list.</p> <p>4 Did you prepare these minutes?</p> <p>5 A No.</p> <p>6 Q Do you remember ever receiving a copy of</p> <p>7 these minutes?</p> <p>8 A Well, I should have, as a member of the</p> <p>9 committee. I'm sure -- I'm sure -- I don't know</p> <p>10 whether I could find them today, but I think they</p> <p>11 usually have the courtesy of giving everyone who</p> <p>12 attended a copy of the minutes, yes.</p> <p>13 Q So I think you're referring to Bell 22.</p> <p>14 Maybe let's put that aside for now.</p> <p>15 Looking at Bell 21 --</p> <p>16 A Okay.</p> <p>17 Q -- it is the Shell Egg Marketing Committee</p> <p>18 minutes for October 20, 2004.</p> <p>19 A Okay.</p> <p>20 Q So this is not the Scientific Advisory</p> <p>21 Committee?</p> <p>22 A It is not the Scientific Advisory, and I</p> <p>23 don't see my name on it and, therefore, I guess I</p> <p>24 wasn't --</p> <p>25 Q Well, your name is on here, but here is my</p>	<p>1 receiving these particular minutes?</p> <p>2 A Do I remember receiving these minutes? I</p> <p>3 can't say. I do not recall this specific, but I</p> <p>4 would expect 99 percent chance that I did.</p> <p>5 Q So sitting here today, do you have any</p> <p>6 independent recollection, other than just reading</p> <p>7 the document about what happened at this meeting?</p> <p>8 A I was in Chicago --</p> <p>9 Q Other than reading the document, do</p> <p>10 you remember the --</p> <p>11 MR. OLSON: Let's have him just answer the</p> <p>12 question.</p> <p>13 MR. TAKENOUCHI: Is that the objection,</p> <p>14 Counsel? You can object if you'd like.</p> <p>15 MR. OLSON: Yes, it is an objection. You</p> <p>16 are interrupting him when he gives an answer you</p> <p>17 don't like.</p> <p>18 BY MR. TAKENOUCHI:</p> <p>19 Q Other than reading the document, do you</p> <p>20 have any independent recollection of what happened</p> <p>21 at this meeting in 2004, other than reading the</p> <p>22 document?</p> <p>23 MR. OLSON: And he started to say, "I was</p> <p>24 in Chicago."</p> <p>25 THE WITNESS: All I can recall is that we</p>

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<p>1 had a meeting of this group in Chicago somewhere in 2 that time period. But like most meetings, I don't 3 recall what they said. 4 BY MR. TAKENOUCHI: 5 Q Okay. So sitting here today you don't 6 recall what happened at this meeting? 7 A No. 8 MR. GODLSTEIN: You mean correct? You said 9 "No," and your answer may be ambiguous given the way 10 the question is asked. 11 THE WITNESS: You're right, you're right, 12 you're right. So I do not remember specifically 13 what went on at this meetings except from these 14 minutes. 15 BY MR. TAKENOUCHI: 16 Q Let's go to Bell 3, if you could. 17 A Which one? 18 Q Bell 3. 19 A 3? 20 Q And, actually, let's pull out Bell 11, too, 21 while we're at it. 22 So focusing -- let's focus on Bell 11 to 23 start off with. 24 A That's the wrong one. 11? 25 Q Yes, September 2000, "Recommendations for</p>	<p>1 I think Barrie Wilcox probably was 2 president at that time, and we know about Gene. 3 Q When you say "president," president of 4 what? 5 A President of United Egg Producers. 6 Q Okay. 7 A They have a hired, full-time general 8 manager, Al Pope and Gene Gregory. I don't see his 9 title here, but it's a hired person. 10 Q Were Wilcox and Gregory voting members of 11 the Scientific Advisory Committee? 12 A No, no, neither one were voting members. 13 MR. OLSON: Objection to form. 14 BY MR. TAKENOUCHI: 15 Q Let me restate the question. If you could 16 let me finish -- 17 A I got your question. 18 Q No, I got you. You're getting ahead of me. 19 Let me finish just for the record. 20 A Go ahead. 21 Q Were Barrie Wilcox and Gene Gregory voting 22 members of the Scientific Advisory Committee? 23 MR. OLSON: Objection to form. 24 THE WITNESS: No. 25 BY MR. TAKENOUCHI:</p>
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<p>1 UEP Animal Welfare Guidelines." 2 A Yes. 3 Q Do you remember being asked about this 4 yesterday? 5 A Yes. 6 Q I want to direct your attention to the 7 third page in this document. 8 A Third page? 9 Q It is the one that has -- 10 A The list? 11 Q Yes, the list. 12 A Go ahead. 13 Q Now, at the bottom of this list after 14 Dr. Janice Swanson's name and her affiliation -- 15 A Yes. 16 Q -- there is a line that says "Support." 17 A Yes. 18 Q And then it lists two names. 19 A Yes. 20 Q Do you know what "support" meant? 21 A If we have any questions that they could 22 help us with. We were independent as far as the 23 welfare issues. They were there to listen and I 24 suppose to report back to their members, what have 25 you.</p>	<p>1 Q Now, referring you to Bell Number 3 -- 2 A 3? 3 Q -- which is the United Voices newsletter. 4 A I got it. 5 Q Do you see how there is a list on that 6 first page of members of the committee? 7 A Yes, yes. 8 Q Okay. So it shows "Gene Gregory's - UEP 9 Staff Support." 10 Do you see that? 11 A Yes. 12 Q It doesn't list Barrie Wilcox -- 13 A Yes, it does, it doesn't list under "Staff 14 Support." I guess it is more important that he's 15 got his own farm -- 16 Q Sure. But was Wilcox a voting member of 17 the -- 18 A No. 19 Q -- Scientific Advisory Committee? 20 MR. OLSON: Objection to form. 21 THE WITNESS: Excuse me. 22 No. 23 BY MR. TAKENOUCHI: 24 Q Just to clean it up, was Barrie Wilcox a 25 member of the Scientific Advisory Committee --</p>

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<p>1 MR. OLSON: Objection to form.</p> <p>2 BY MR. TAKENOUCHI:</p> <p>3 Q -- a voting member?</p> <p>4 A No.</p> <p>5 Q So go ahead and put those to the side.</p> <p>6 A You'll note the names are slightly</p> <p>7 different on the two lists.</p> <p>8 Q Okay. Yes, thank you.</p> <p>9 Let's look at Bell 13.</p> <p>10 A 13.</p> <p>11 Q This is the economic consultant agreement.</p> <p>12 A Oh.</p> <p>13 Q The Bates is UE 790540.</p> <p>14 A Okay.</p> <p>15 Q Now, this agreement on that second</p> <p>16 paragraph with the numbers, actually --</p> <p>17 A Yes.</p> <p>18 Q -- there's four numbers there --</p> <p>19 A Yes.</p> <p>20 Q -- what are you listing there? What's</p> <p>21 being listed there?</p> <p>22 A These are all --</p> <p>23 MR. OLSON: Objection -- objection to form.</p> <p>24 THE WITNESS: These are all newsletters. I</p> <p>25 do not see the memo in there. It might have been</p>	<p>1 BY MR. TAKENOUCHI:</p> <p>2 Q So your -- so this consultant agreement</p> <p>3 lists those things, those reports you just</p> <p>4 mentioned.</p> <p>5 Did your consultant agreement with UEP</p> <p>6 include compensation for your service on the</p> <p>7 Scientific Advisory Committee?</p> <p>8 A No. I was on a retainer for just my time.</p> <p>9 I think I said earlier that I received expenses. I</p> <p>10 don't recall ever receiving an honorarium or a</p> <p>11 special check or anything like that.</p> <p>12 So it was my -- it was assumed that I would</p> <p>13 attend the committee meeting, that's why they wanted</p> <p>14 me on there in the first place.</p> <p>15 And that was just part of my regular</p> <p>16 activity.</p> <p>17 Q Okay. You mean part of your regular</p> <p>18 activities was to serve on the Scientific Advisory</p> <p>19 Committee?</p> <p>20 MR. OLSON: Objection to form.</p> <p>21 THE WITNESS: And to -- let me see how you</p> <p>22 said that.</p> <p>23 BY MR. TAKENOUCHI:</p> <p>24 Q I'll withdraw that and clean it up a little</p> <p>25 bit.</p>
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<p>1 added later. The Egg Economics Update went back to</p> <p>2 about 1983, I believe. It started out as a weekly,</p> <p>3 they became a monthly.</p> <p>4 The U.S. Monthly Flock Projection was an</p> <p>5 attempt to take the statistics that the USDA</p> <p>6 provided and make a projection of how many layers</p> <p>7 that would result in for the next -- it could be as</p> <p>8 long as two years.</p> <p>9 The next one is "Statistical," that's just</p> <p>10 a bunch of tables and graphs from a variety of</p> <p>11 sources, not just the USDA, but a variety of</p> <p>12 sources.</p> <p>13 The last one, "Regional Egg Production Cost</p> <p>14 Estimates," that would involve -- it says feed is a</p> <p>15 big cost. We would get -- we would get cost</p> <p>16 estimates from the industry on either finished feed</p> <p>17 for a long number of years, we did it that way, by</p> <p>18 sampling feed mills, and the emphasis was</p> <p>19 California.</p> <p>20 And then later on we started to synthesis</p> <p>21 feed costs by looking at the ingredients and the</p> <p>22 formula of the feed.</p> <p>23 So those are the four basic things that are</p> <p>24 still being carried on today, and they started as</p> <p>25 much as 20 to 30 years ago.</p>	<p>1 A Okay.</p> <p>2 Q I'm just focusing now on the task you</p> <p>3 agreed to do as part of your economic consultant</p> <p>4 agreement.</p> <p>5 A Yes.</p> <p>6 Q And try to differentiate that from the</p> <p>7 tasks outside the agreement.</p> <p>8 So was the service on the Scientific</p> <p>9 Advisory Committee part of this agreement or was it</p> <p>10 something outside of this agreement?</p> <p>11 MR. OLSON: Objection to form.</p> <p>12 THE WITNESS: No, the task on the</p> <p>13 Scientific Advisory Committee, I guess, started in</p> <p>14 '99, right?</p> <p>15 This agreement here is dated 2001. That</p> <p>16 coincides with my retirement period. And I</p> <p>17 continued to do these newsletters through Iowa State</p> <p>18 University, counterpart -- the industry needs this</p> <p>19 information, but the lawsuits and everything going</p> <p>20 on have prevented UEP from continuing this type of</p> <p>21 activity, statistical activity, pricing and so on,</p> <p>22 cost of production.</p> <p>23 So now it's done at the Egg Industry Center</p> <p>24 at Iowa State University, with a fellow editor, and</p> <p>25 it is financed by the American Egg Board. And I</p>

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<p>1 never did require financing when I did it, but they 2 make things bigger and better. 3 But -- so it's continuing because the 4 industry said without this kind of information we'd 5 be lost. 6 BY MR. TAKENOUCHI: 7 Q And that was the information that you 8 agreed to -- 9 A Those things. 10 Q And those things being this list here on 11 this economic consultant agreement? 12 MR. OLSON: Objection to form. 13 THE WITNESS: Yes. 14 MR. TAKENOUCHI: Okay. 15 Q The transcript doesn't pick up -- 16 A I'm being bad. 17 Q That's all right, that's all right. We'll 18 take care of it. 19 So, again, I just wanted to understand the 20 distinction here and understand whether -- whether 21 the services you were providing pursuant to this 22 agreement that are listed here -- correct? 23 A Uh-huh. 24 Q Now, the Scientific Advisory Committee is 25 not listed on this agreement, correct?</p>	<p>1 Advisory Committee, was I ever paid for that -- 2 BY MR. TAKENOUCHI: 3 Q Yes. 4 A -- separately? No. 5 Q Let's put that aside and look at Bell 6 Exhibit 4. 7 MR. OLSON: Do you have an estimate how 8 much longer we're going here? 9 MR. TAKENOUCHI: I do not. 10 THE WITNESS: Okay. 11 BY MR. TAKENOUCHI: 12 Q So I think this is a document you were 13 questioned about yesterday. This is a 1994 Egg 14 Economics Update. 15 Do you see that? 16 A Yes. 17 Q Now, a couple things I'd like to ask you 18 about this document. 19 If you look at the upper left of the first 20 page here -- 21 A Go ahead. 22 Q -- it says "Cooperative Extension"? 23 A Yes. 24 Q What does that refer to? 25 MR. OLSON: Objection to form, asked and</p>
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<p>1 MR. OLSON: Objection to form. 2 THE WITNESS: The fourth, fifth 3 paragraph -- second one from the bottom and the 4 bottom one, it talks about special events or special 5 projects or attending meetings, and it is spelled 6 out there that we'd even negotiate compensation for 7 that extra time. That's all extra time. 8 BY MR. TAKENOUCHI: 9 Q Were you ever paid, other than expenses and 10 lodging, for your services on the Scientific 11 Advisory Committee? 12 MR. OLSON: Objection to form. 13 THE WITNESS: I don't think so. Just the 14 travel expenses and my ongoing relationship -- 15 ongoing agreement. 16 BY MR. TAKENOUCHI: 17 Q That answer was a little unclear to me. 18 A You want more? 19 Q Okay. Other than expenses and lodging, 20 taking that out of the equation -- 21 A Okay, okay. 22 Q -- were you ever paid for your services on 23 the Scientific Advisory Committee? 24 MR. OLSON: Objection to form. 25 THE WITNESS: As a member of the Scientific</p>	<p>1 answered. 2 THE WITNESS: You want the answer? 3 BY MR. TAKENOUCHI: 4 Q Yes. 5 A You'll notice there's two things on the 6 upper line, "Cooperative Extension," "University of 7 California." It's a part, a department, a group of 8 people who do extension work, which means you extend 9 the university from the campus, away from the 10 campus. 11 And cooperative extension, originally it 12 was all agriculture, all agriculture. 13 It now -- it also at some point in time 14 picked up the 4H -- our 4H program for the youth 15 related to agriculture, also home advisors, which is 16 the homemaker. 17 And I believe around this time period we 18 might have had a staff of 4- to 500 statewide. 19 And there is an extension service -- 20 cooperative extension in every land grant university 21 state. 22 Q So let me break it up in two parts here. 23 What is a land grant university? 24 A Land grant is where the state got money 25 from the federal government to establish a</p>

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<p>1 University of California or Arizona State</p> <p>2 University, or whatever, and that was an educational</p> <p>3 format. It included three things, research, on-site</p> <p>4 teaching, like UC Riverside here, and the third</p> <p>5 would be cooperative extension.</p> <p>6 Now we also have university extension,</p> <p>7 which is night classes --</p> <p>8 THE VIDEOGRAPHER: We have to go off the</p> <p>9 record. The power shut down.</p> <p>10 MR. TAKENOUCHI: Okay.</p> <p>11 THE VIDEOGRAPHER: The time is</p> <p>12 approximately 2:39 p.m., and we're going off the</p> <p>13 record.</p> <p>14 (Recess.)</p> <p>15 THE VIDEOGRAPHER: This marks the beginning</p> <p>16 of media number 3 in the video deposition of</p> <p>17 Don Bell, Volume II.</p> <p>18 The time is approximately 3:06 p.m., and</p> <p>19 we're back on the record.</p> <p>20 And just to let you know, we lost power for</p> <p>21 a few minutes, and we may have lost the last</p> <p>22 question and answer, so I think we're going to</p> <p>23 repeat the last question and answer.</p> <p>24 MR. TAKENOUCHI: For the folks on the</p> <p>25 phone, we're just going to go back to the last full</p>	<p>1 which they could develop their institution. Well,</p> <p>2 it's only one per state.</p> <p>3 Go ahead.</p> <p>4 Q So what's the relationship between the</p> <p>5 cooperative extension and the land grant university?</p> <p>6 A A land grant university has three basic</p> <p>7 roles. One is on-site teaching, and we think in</p> <p>8 terms of younger students. We have a research role,</p> <p>9 which is a major role in every kind of field. The</p> <p>10 third is extension, which is -- follows all the</p> <p>11 others over time and so on, and it's a matter of</p> <p>12 taking what's at the university campus itself to all</p> <p>13 corners of the state and -- with an emphasis in</p> <p>14 agriculture, but not exclusively.</p> <p>15 Q And what funds the cooperative extension?</p> <p>16 Where does the money come from?</p> <p>17 A Well, it varies, but it usually is</p> <p>18 considered to come from federal sources, the county</p> <p>19 that you're in for the local program and for the</p> <p>20 state of California -- for the University of</p> <p>21 California. My salary, for example, comes from --</p> <p>22 originally from the State of California to the</p> <p>23 University of California.</p> <p>24 The local expenses of maintaining an office</p> <p>25 and staff is usually the county's. The normal</p>
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<p>1 answer we have on video to recap it so the witness</p> <p>2 has it in context and then I'll just reask the</p> <p>3 question that got interrupted by the power outage.</p> <p>4 So if the court reporter could read back</p> <p>5 the response to --</p> <p>6 MR. OLSON: Didn't we get an answer to what</p> <p>7 a land grant university was?</p> <p>8 MR. TAKENOUCHI: So the tape got cut off.</p> <p>9 So what do you want?</p> <p>10 MR. OLSON: I'll stipulate to what a land</p> <p>11 grant university is.</p> <p>12 MR. TAKENOUCHI: What is a land grant</p> <p>13 university, Steig?</p> <p>14 MR. OLSON: What do you think it is?</p> <p>15 Whatever it says in the dictionary, we'll stipulate</p> <p>16 to.</p> <p>17 MR. TAKENOUCHI: Could you read back the</p> <p>18 last full answer he had -- question and answer.</p> <p>19 I'll just reask it.</p> <p>20 Q Mr. Bell, what is a land grant university?</p> <p>21 A A land grant university originated in 1859,</p> <p>22 or something of that type. It established an</p> <p>23 institution of higher learning for each state.</p> <p>24 It was called a land grant because the</p> <p>25 federal government provided land for each state of</p>	<p>1 breakdown is something like 25/25/50 percent. So</p> <p>2 the University of California through the -- the</p> <p>3 State of California through the University of</p> <p>4 California would be the highest portion of that,</p> <p>5 about half, and tied directly to the USDA and grants</p> <p>6 to work on universal problems of the entire country.</p> <p>7 Q So just so I understand, you said 25/25/50.</p> <p>8 50 was California, what is the other 25/25?</p> <p>9 A County and federal would be each about 25.</p> <p>10 Q And what's the source of the federal funds?</p> <p>11 MR. OLSON: Objection to form.</p> <p>12 THE WITNESS: Your taxes.</p> <p>13 BY MR. TAKENOUCHI:</p> <p>14 Q I guess what egg does it come out of? Does</p> <p>15 it come out of the Department of Agriculture or --</p> <p>16 A The U.S. Department of Agriculture uses</p> <p>17 funds to do this, this, this and this, and part of</p> <p>18 it has to do with research at the local level.</p> <p>19 And I can't give you the exact breakdown of</p> <p>20 everything that they do, but there are all kinds of</p> <p>21 national programs of which the nation, as a whole,</p> <p>22 supports the local expenses.</p> <p>23 Q Who was your employer before 2001?</p> <p>24 A University of California.</p> <p>25 Q Okay. So was the cooperative extension --</p>

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<p>1 A Always there.</p> <p>2 Q Okay. But was the cooperative extension</p> <p>3 your employer too or was it --</p> <p>4 A The cooperative extension is part of the</p> <p>5 University of California.</p> <p>6 Q Okay.</p> <p>7 A My immediate supervisor would be a</p> <p>8 University of California person in an administrative</p> <p>9 role, each of the offices of which we have 50 or</p> <p>10 more.</p> <p>11 Q And what was your title?</p> <p>12 A It's been two different titles through my</p> <p>13 career. It started out as a farm advisor in a given</p> <p>14 county. Then it became a multi-county position.</p> <p>15 Then it went back to a one-county position. And</p> <p>16 then it became statewide poultry specialist.</p> <p>17 Q So during your employment with the</p> <p>18 cooperative extension, what were you supposed to do?</p> <p>19 What were the goals of your job?</p> <p>20 A Education from a technological standpoint,</p> <p>21 solution of problems of our farmers. When I started</p> <p>22 out, we had 400 egg farmers in one county, so in the</p> <p>23 state we had over 2,000.</p> <p>24 And so those are the people we worked with.</p> <p>25 Some were very good cooperators, sought you out,</p>	<p>1 working with the egg producers. That's a major</p> <p>2 commodity in California. Why are you working on a</p> <p>3 particular project, economics? Because I've</p> <p>4 convinced my administrators that that's a very</p> <p>5 important subject for the egg industry, and so on.</p> <p>6 BY MR. TAKENOUCHI:</p> <p>7 Q And you talked about a write-up. What do</p> <p>8 you mean by a write-up?</p> <p>9 A I guess I said write-up.</p> <p>10 Write-up would be the proposal in the first</p> <p>11 place to do something and to redo -- continue it the</p> <p>12 second year and so on through whatever time period.</p> <p>13 And then the so what, the write-up would be so what.</p> <p>14 Q Would these be written reports you would</p> <p>15 distribute to someone?</p> <p>16 A They'd be mainly in-house. I didn't</p> <p>17 have -- some people have a committee of farmers that</p> <p>18 they communicate with in some way, around a table or</p> <p>19 report sharing or whatever it may be.</p> <p>20 I did so much extensive writing, as we've</p> <p>21 been pulling out here, that the flow of information</p> <p>22 is pretty well documented.</p> <p>23 Whether anybody looks at this particular</p> <p>24 newsletter and says, "Don, I don't think you should</p> <p>25 be doing that," no. You have pretty much control</p>
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<p>1 asked you problems, phoned you up, very close</p> <p>2 relationships. Others had nothing to do with you</p> <p>3 because they didn't think that the -- that the,</p> <p>4 quote unquote, government should be doing these</p> <p>5 kinds of things free, these are free services,</p> <p>6 sponsored by the University of California.</p> <p>7 Q So was there government oversight over what</p> <p>8 you did for the cooperative exchange -- or the</p> <p>9 cooperative extension?</p> <p>10 MR. OLSON: Objection to form.</p> <p>11 THE WITNESS: I would say the federal</p> <p>12 government would look at the statewide programs,</p> <p>13 fund them or not. Probably funding or not is the</p> <p>14 way you control your programs. If you don't give</p> <p>15 them money, you're not going to have a program.</p> <p>16 Your supervisor, in my case, would be a</p> <p>17 regional director, and he would have -- each one</p> <p>18 would have more or less knowledge of what you're</p> <p>19 doing on a day-by-day basis.</p> <p>20 So there is a reporting system, of course,</p> <p>21 we have to report what we're doing.</p> <p>22 You shouldn't work into your write-up while</p> <p>23 you're doing it, how you're doing it, what's the</p> <p>24 industry payoff of what you're doing, why are you</p> <p>25 doing that, this question you asked, why are you</p>	<p>1 over what you do.</p> <p>2 Q Did any of your supervisors have access to</p> <p>3 the reports you did, like this Bell Number 4?</p> <p>4 A They all do, all my supervisors. You would</p> <p>5 usually only have one supervisor at a time, but</p> <p>6 there's a chain all the way up to the president of</p> <p>7 the university. He doesn't read many reports.</p> <p>8 Q Did you have any contact with the USDA</p> <p>9 during your time working for the cooperative</p> <p>10 extension?</p> <p>11 A Most of the hard data on a national basis</p> <p>12 comes from them or other agencies of the federal</p> <p>13 government. We also have state government. We do</p> <p>14 the same thing with them. We have access to their</p> <p>15 groups, agencies.</p> <p>16 Go ahead.</p> <p>17 Q Okay. So looking at this document, Bell</p> <p>18 Number 4, this is a 1994 Egg Economics Update.</p> <p>19 A Yes.</p> <p>20 Q And maybe you can explain this to me. I'm</p> <p>21 looking at the bottom of the first page there. Do</p> <p>22 you see in the very small type -- I apologize for</p> <p>23 that -- it says, "In accordance with applicable</p> <p>24 federal laws and university policy, University of</p> <p>25 California does not discriminate"?</p>

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<p>1 Do you see that language?</p> <p>2 A Yes.</p> <p>3 Q On the very bottom it says, "University of</p> <p>4 California and the United States Department of</p> <p>5 Agriculture cooperating."</p> <p>6 What does that mean?</p> <p>7 A That means they are sharing on the</p> <p>8 expenses. They don't list the county, because</p> <p>9 that's not required in this particular format.</p> <p>10 This is required on every document that we</p> <p>11 do, this particular statement. I don't think it's</p> <p>12 going to be on the e-mail, but on any kind of</p> <p>13 official publication they want to know who to blame</p> <p>14 and who not to discriminate against and so on.</p> <p>15 I'd rather say who we didn't</p> <p>16 discriminate -- who we did discriminate is a shorter</p> <p>17 list than who we don't discriminate. That's my</p> <p>18 personal view.</p> <p>19 Q So you were instructed that you had to put</p> <p>20 this disclaimer --</p> <p>21 A Absolutely.</p> <p>22 Q -- at the bottom of every report?</p> <p>23 A Yes.</p> <p>24 Q Now, in this period, 1994, were you on</p> <p>25 contract with UEP?</p>	<p>1 your clients, or whatever, that eventually the USDA</p> <p>2 people would come in and say that person is not</p> <p>3 doing what they are supposed to be doing. That</p> <p>4 would be their control -- ultimate control. I've</p> <p>5 never been involved in anybody questioning my</p> <p>6 program.</p> <p>7 BY MR. TAKENOUCHI:</p> <p>8 Q But did they have the ability at the USDA</p> <p>9 to question what you are doing?</p> <p>10 MR. OLSON: Objection to form.</p> <p>11 THE WITNESS: I'm not going to comment on</p> <p>12 that because I don't know how the government works.</p> <p>13 BY MR. TAKENOUCHI:</p> <p>14 Q Most of us don't.</p> <p>15 But your understanding was that the USDA</p> <p>16 would have the ability to regulate what you're</p> <p>17 doing?</p> <p>18 MR. OLSON: Objection to form.</p> <p>19 BY MR. TAKENOUCHI:</p> <p>20 Q Is that correct?</p> <p>21 A Purely theoretical. Purely theoretical.</p> <p>22 The concern of this statement in here, it</p> <p>23 has to do that no one can be exempt from your</p> <p>24 services.</p> <p>25 Q Okay. And that was because there were</p>
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<p>1 A No, I don't -- I think we decided that we</p> <p>2 started that in 2001, didn't we, on contract?</p> <p>3 Q So 1994 --</p> <p>4 A Another document here.</p> <p>5 Q So in 1994 you were just working for the</p> <p>6 cooperative extension?</p> <p>7 A No, no -- yes, I was working for the</p> <p>8 cooperative extension, and the UEP relationship</p> <p>9 didn't start until -- what did we say, 2001?</p> <p>10 Q Yes.</p> <p>11 A Purely cooperative extension. My title</p> <p>12 was, at this point in time, poultry specialist.</p> <p>13 Q So looking at this report with the</p> <p>14 disclaimer at the bottom there, was this report a</p> <p>15 result of federal financing?</p> <p>16 MR. OLSON: Objection; form.</p> <p>17 THE WITNESS: Indirectly. Indirectly. You</p> <p>18 helped pay for it too, thank you.</p> <p>19 The fact that they may have had 25 percent</p> <p>20 participation in the University of California,</p> <p>21 period, it doesn't imply that 25 percent of my</p> <p>22 expenses, no. It may be a quarter of a percent.</p> <p>23 But, you know, that's a grand total. So the fact</p> <p>24 that it says USDA cooperating, I suppose if you</p> <p>25 started to get off base or you started to lie to</p>	<p>1 strings attached to getting federal funds and state</p> <p>2 funds?</p> <p>3 MR. OLSON: Objection to form.</p> <p>4 THE WITNESS: Well, they have the final</p> <p>5 say-so. If they don't get the funds, we're going to</p> <p>6 be 25 percent short of funds. So we follow all the</p> <p>7 national programs, don't we.</p> <p>8 If -- we were taking about sexual</p> <p>9 orientation here a long, long time ago.</p> <p>10 BY MR. TAKENOUCHI:</p> <p>11 Q I think we're a little far afield on that.</p> <p>12 A Is that far afield?</p> <p>13 Q I think for this discussion.</p> <p>14 A Go ahead.</p> <p>15 Q But -- so taking you back to 1994, was the</p> <p>16 USDA aware of these reports you were putting out?</p> <p>17 MR. OLSON: Objection form.</p> <p>18 THE WITNESS: This report.</p> <p>19 BY MR. TAKENOUCHI:</p> <p>20 Q The reports in general, was --</p> <p>21 A The reports in general?</p> <p>22 Q Yes.</p> <p>23 A Individual department people would be, the</p> <p>24 poultry specialist for the United States would be.</p> <p>25 But once you get into wheat farmers, wheat</p>

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<p style="text-align: right;">316</p> <p>1 specialists, or departments of engineering, whatever</p> <p>2 it may be, at the USDA level there is no such thing,</p> <p>3 but other departments that have very little to do</p> <p>4 with chickens, they would not be exposed at all to</p> <p>5 this and they couldn't absorb it even if they were.</p> <p>6 Q Are there USDA departments that focus on</p> <p>7 chickens?</p> <p>8 A Absolutely, yes.</p> <p>9 Q Okay. So in those departments that focus</p> <p>10 on chickens, would those folks have been aware of</p> <p>11 these reports you're putting out?</p> <p>12 MR. OLSON: Objection to form.</p> <p>13 THE WITNESS: Some would. Some would.</p> <p>14 There's all kinds of interest in chickens.</p> <p>15 Like my cousins would say, you're a chicken</p> <p>16 inspector. No, I'm not a chicken inspector.</p> <p>17 So there's all different people who work</p> <p>18 with chickens. I'm talking about thousands at the</p> <p>19 federal level, institutional level, and so on.</p> <p>20 So people who are interested in egg laying</p> <p>21 chickens in California, we would have no problem</p> <p>22 with covering them, but --</p> <p>23 BY MR. TAKENOUCHI:</p> <p>24 Q So looking at some of the reports you've</p> <p>25 already talked about --</p>	<p style="text-align: right;">318</p> <p>1 A It is the theme behind the whole</p> <p>2 newsletter.</p> <p>3 Q Okay. And so this theme about supply and</p> <p>4 price issues, is that what you're talking about?</p> <p>5 A Yes.</p> <p>6 MR. OLSON: Objection to form.</p> <p>7 BY MR. TAKENOUCHI:</p> <p>8 Q This theme about supply and price issues,</p> <p>9 was that in just this report or did you have many</p> <p>10 reports over time that dealt with that issue?</p> <p>11 MR. OLSON: Objection; form.</p> <p>12 THE WITNESS: It's been discussed by me in</p> <p>13 multiple reports. I can't say many, but the concept</p> <p>14 here of a production versus the value of that</p> <p>15 production right here, that's what that is, has been</p> <p>16 the subject of several reports.</p> <p>17 BY MR. TAKENOUCHI:</p> <p>18 Q Do you know when you first started</p> <p>19 recommending to producers that they might want to</p> <p>20 look at their supply issues if they were concerned</p> <p>21 about being a viable business?</p> <p>22 A I didn't -- I haven't said this before, but</p> <p>23 it was inferred, that 40 percent of the time your</p> <p>24 clients are losing money. And that is a repeatable</p> <p>25 concept as far as I went back in my career. And I</p>
<p style="text-align: right;">317</p> <p>1 A Yes.</p> <p>2 Q -- and I think you've mentioned kind of</p> <p>3 your history of writing these kinds of analyses for</p> <p>4 a while --</p> <p>5 A Yes.</p> <p>6 Q -- this analysis here in Bell 4 talking</p> <p>7 about supply of eggs and possible price effects, is</p> <p>8 that something that you just discovered in 1994 or</p> <p>9 did you have some knowledge of that before 1994?</p> <p>10 MR. OLSON: Objection; form.</p> <p>11 THE WITNESS: We have been tracking this</p> <p>12 kind of information since I began in 1958.</p> <p>13 BY MR. TAKENOUCHI:</p> <p>14 Q Okay.</p> <p>15 A It starts with the original source. And</p> <p>16 the original source is the farmer.</p> <p>17 USDA would be a parallel source, but they</p> <p>18 go back to the farmer. The farmer is the one who</p> <p>19 has these kinds of numbers.</p> <p>20 Now, some of these numbers are constructed</p> <p>21 by me, taking what's reported, what you know from</p> <p>22 this source and this source and this source, and</p> <p>23 it's very difficult to find this last column, for</p> <p>24 example, on page 1.</p> <p>25 Q Okay.</p>	<p style="text-align: right;">319</p> <p>1 started in 1957 with the year '57 analysis, and I</p> <p>2 started in January of '58.</p> <p>3 My experience was that that was frequent</p> <p>4 enough, either -- either one month after another,</p> <p>5 one year after another, or for that period that</p> <p>6 that's a serious problem.</p> <p>7 And when you relate it to the number of</p> <p>8 eggs that are produced and the size of the flock and</p> <p>9 all that, it's a very important relationship.</p> <p>10 So much of my program had to do with</p> <p>11 bringing that into line.</p> <p>12 Approximately in a five-year period -- I</p> <p>13 believe I testified to this yesterday, five or</p> <p>14 six-year period is a cycle.</p> <p>15 What I mean by a cycle, it means from good</p> <p>16 to poor to bad to poor back to good annually.</p> <p>17 And so I would say that there's two years</p> <p>18 of poor, two years of fair, one year of good in</p> <p>19 every cycle. That's an important concept that maybe</p> <p>20 outsiders don't realize, is that it's not a</p> <p>21 continuously good or bad industry. It's an</p> <p>22 up-and-down situation.</p> <p>23 One of the highest peaks of profitability</p> <p>24 we had was in the last four or five years, and it</p> <p>25 had to do with the high cost of corn and so on. But</p>

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<p>1 the up was in three months and the down was in three 2 months. 3 Q And just to take that issue for a second, 4 you said the high price of corn? 5 A Yes. 6 Q Don't farmers -- do farmers have to pay for 7 corn? I'm not sure how -- prices may have gone 8 high, but didn't costs go up as well? 9 MR. OLSON: Objection; form. 10 THE WITNESS: Well, corn is the cost. Corn 11 is 65 percent of your cost. 12 So the price of corn being sold overseas 13 went way up. It went up to 30, 35 percent of the 14 total. 15 The amount that went into ethanol 16 production for fuel, that takes off a portion of the 17 feed stuffs that the poultrymen are used to using 18 and elevates the price of the remainder. 19 And so those things happening, and some of 20 those were -- you could blame on the federal 21 government for policies on fuel and so on. But 22 there's only so many acres to grow corn. And so I 23 got -- I started thinking maybe we're going to have 24 to contract with the corn grower to supply me only 25 with my corn.</p>	<p>1 something about that issue. I can't tell you the 2 first letter I ever wrote about that, I can't tell 3 you. 4 Q Was this before this Bell number 4 in 1994? 5 A Probably. 6 Q Do you think it is fair to say that the 7 USDA was aware of the recommendations made for 8 dealing with supply and price during this period? 9 MR. OLSON: Objection; form. 10 THE WITNESS: The economists were in the 11 nation -- in the USDA, rather, there might have been 12 10 or 20 economists that were concerned about 13 poultry. 14 Today it's just two or three statisticians, 15 but not Ph.D. economists working in poultry. 16 BY MR. TAKENOUCHI: 17 Q Looking back at this period in the 1990s, 18 did you see it as part of your job at the 19 cooperative extension to give advice to farmers 20 about how to deal with supply and price issues? 21 A Yes, I felt that was part of my 22 responsibility, yes. 23 Q Did you feel it was part of your mission? 24 MR. OLSON: Objection to form. 25 THE WITNESS: Mission is a broader concept</p>
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<p>1 BY MR. TAKENOUCHI: 2 Q Okay. So going back to the reports you did 3 for the cooperative extension, I think I'd asked if 4 you remembered when you first started telling 5 individual farmers or writing in newsletters that 6 there is a relationship between the supply of eggs 7 and the price of eggs? 8 A Soon as I was convinced that this was an 9 ongoing problem. 10 Q And when was that? 11 A Well, I can't tell you. It would have been 12 post 1958, because I would have to experience these 13 records coming in from my cooperators that said that 14 this is happening so often that it's pushing people 15 out of business. 16 Q And I understand past 1958, but can you put 17 it roughly in time? Is it the '70s, the '60s, the 18 '80s? 19 A Now, remember I told you that the cycles 20 are five years, so -- and you have two bad years in 21 a row and here is five years later you have it 22 again. 23 I can't tell you which year at the 24 beginning that this whole thing started, but it was 25 there long enough, frequently enough to start to say</p>	<p>1 than procedures. I've felt -- I've always felt that 2 the -- that my mission is to work for a healthy 3 industry economically, and that's a moving target. 4 BY MR. TAKENOUCHI: 5 Q Do you think that the USDA was aware of the 6 recommendations you were making in the 1990s about 7 how to better match supply and, therefore, increase 8 price? 9 A The economists -- 10 MR. OLSON: Objection to form. 11 THE WITNESS: There are economists I've 12 worked with all my life would be, yes. 13 BY MR. TAKENOUCHI: 14 Q And why do you say that? 15 A Why do I say that? Because it's true. 16 Q Did you talk with anyone about that? 17 A Oh, yes. There are so few economists 18 involved -- remember, all my data comes from the 19 USDA -- not all of it, but some of the bare material 20 comes -- because they have a better collection 21 system. I can get on the phone and find out what 22 one person is doing, but they have a thorough 23 collection system. I don't always agree with it, 24 their sampling procedures and so on. 25 But if I don't agree with it, then I modify</p>

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<p>1 it. I modify it and I say this is my 2 interpretation. 3 Q But you talk with USDA economists about 4 your recommendation about how to better match supply 5 and demand and, therefore, affect prices? 6 A Yes. 7 MR. OLSON: Objection to form. 8 BY MR. TAKENOUCHI: 9 Q Did anyone at the USDA ever tell you that 10 you shouldn't be making these kind of 11 recommendations? 12 A No. 13 Q Did anyone at any other government entity 14 ever tell you you shouldn't be making those 15 recommendations? 16 A No. 17 Q Sir, I want to refer you to Bell 8. 18 A 8. 19 Q This is that August 2nd, 1999 United 20 Voices. 21 A Okay. Go ahead. 22 Q And I think what we were looking at in this 23 document was on page 3, and I believe there's four 24 numbers there -- 1, 2, 3, 4 -- those 25 recommendations. I don't know how to characterize</p>	<p>1 Q What is this? 2 A It's a newsletter. 3 Q Okay. 4 A Number 217 in a series. 5 Q Okay. 6 MR. OLSON: Does this document have a Bates 7 number? 8 MR. TAKENOUCHI: It does not have a Bates 9 number. 10 MR. OLSON: It hasn't been produced? 11 MR. TAKENOUCHI: It was on the public 12 website for the cooperative extension. 13 MR. OLSON: But it hasn't been produced? 14 MR. TAKENOUCHI: No. 15 Q So drawing your attention here to this 16 document -- 17 MR. OLSON: All right. We'll just have a 18 standing objection to the questions about the 19 document that apparently hasn't been produced. 20 MR. TAKENOUCHI: Okay. 21 Q So looking at this document, on the first 22 page there, Mr. Bell, do you see that headline 23 there? 24 A Yes. 25 Q It says, "California's Egg Industry Record</p>
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<p>1 those. 2 Can I have this marked next in order, 3 please. 4 (Deposition Exhibit 29 was marked for 5 identification by the court reporter 6 and is attached hereto.) 7 BY MR. TAKENOUCHI: 8 Q Sir, you've been handed what has been 9 marked as Bell 29. 10 A Are we looking at 3 or 29? 11 Q Let's look at 29, but leave 3 on the table. 12 A Leave that for later? 13 Q Yes. 14 MR. OLSON: We're looking at 8? 15 THE WITNESS: 29. 16 BY MR. TAKENOUCHI: 17 Q Yes, 8. Leave 8 on the table, but we're 18 looking at 29. 19 A Okay. 20 Q Do you recognize this document? 21 A Yes. 22 MR. TAKENOUCHI: For the record, this is 23 Egg Economics Update dated July 12, 1999. 24 Q What is this document? 25 A Yes -- pardon me.</p>	<p>1 One Week Loss - \$2 million"? 2 A Yes, I see that. 3 Q What does that mean? 4 A That means that the eggs were being sold at 5 a price \$2 million less than it cost them to produce 6 them. 7 Q And was that a problem? 8 A Was that a problem? What do you think? 9 Excuse me, I'm not supposed to ask that. 10 It's a problem if you lose money, yes, in 11 anything. 12 Q Was it a particular problem for the egg 13 industry? People lose money all the time, right? 14 MR. OLSON: Objection to form. 15 THE WITNESS: At those levels, I think you 16 see as much as a 22-cent loss per dozen. Every 17 dozen eggs you produce, you lose 22 cents a dozen. 18 It doesn't take too long before you can't pay your 19 feed bill or any of the other costs, and it's part 20 of being pushed out of business. 21 BY MR. TAKENOUCHI: 22 Q I want to draw your attention to the second 23 page. 24 A Go ahead. The second page. 25 Q The title here is, "Removing Flocks Early</p>

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<p>1 That Fail to Cover Variable Costs of Production."</p> <p>2 A Uh-huh.</p> <p>3 Q Do you remember making this recommendation?</p> <p>4 A Yes.</p> <p>5 Q And what is the recommendation?</p> <p>6 A That if you're not covering your costs and</p> <p>7 you don't have any foreseeable future that you will,</p> <p>8 you'd better get rid of them.</p> <p>9 Q Now, why would you have to recommend this?</p> <p>10 Isn't that basic economics or basic business sense?</p> <p>11 MR. OLSON: Objection to form.</p> <p>12 THE WITNESS: Well, thank you.</p> <p>13 BY MR. TAKENOUCHI:</p> <p>14 Q Why do you have to recommend this?</p> <p>15 Shouldn't people know that anyway?</p> <p>16 A Why do you have to refresh people on the</p> <p>17 facts of life? That's what this is. This is a</p> <p>18 demonstration of these relationships. And you are</p> <p>19 trying to give an example, and what you're really</p> <p>20 trying to do is encourage them to run the analysis</p> <p>21 themselves.</p> <p>22 And the way you run the analysis yourself</p> <p>23 is you take one flock at a time, not the entire</p> <p>24 company, one flock at a time, and determine what its</p> <p>25 costs are and what its income is.</p>	<p>1 out, I guess.</p> <p>2 BY MR. TAKENOUCHI:</p> <p>3 Q I think it is right there in front of you.</p> <p>4 A This one? Yes, here is number 8. Go</p> <p>5 ahead.</p> <p>6 Q If you can compare what you have in the</p> <p>7 document in front of you, Bell 29, with that page in</p> <p>8 Bell 8, do those look like the same recommendations?</p> <p>9 MR. OLSON: Objection; form.</p> <p>10 THE WITNESS: I'm sure the general tone is</p> <p>11 the same. The numbers are monthly versus annually.</p> <p>12 It would take a while to -- what's the dates on</p> <p>13 these two reports? '99 and -- '99 -- they are</p> <p>14 almost exactly the same date. This one -- is this</p> <p>15 one from this one? This date here is August '99.</p> <p>16 This date is July '99. So this one preempts this</p> <p>17 one. And I can't imagine that my thinking process</p> <p>18 has changed.</p> <p>19 BY MR. TAKENOUCHI:</p> <p>20 Q So referring to Bell Number 29 with the</p> <p>21 date of July 12th, 1999 --</p> <p>22 A Okay. Go ahead.</p> <p>23 Q -- you'll notice that this one has that</p> <p>24 University of California disclaimer on the bottom</p> <p>25 there?</p>
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<p>1 Now, its income is going to be varied -- we</p> <p>2 talked about this yesterday -- egg quality goes</p> <p>3 down, egg production goes down so every flock is</p> <p>4 unique.</p> <p>5 So you then have to step forward and say</p> <p>6 what's it going to be next week and the month after</p> <p>7 and the month after.</p> <p>8 And if they don't match, then you should</p> <p>9 get rid of them now before they've accumulated</p> <p>10 losses.</p> <p>11 Q So drawing your attention to the third page</p> <p>12 of this document --</p> <p>13 A Third page. Okay. Is there a third page?</p> <p>14 Q Yes.</p> <p>15 A There it is. Go ahead.</p> <p>16 Q There you are.</p> <p>17 So if you look at that, do you see those</p> <p>18 four bullet points there?</p> <p>19 A Yes.</p> <p>20 Q Do you recognize this?</p> <p>21 A I did this report, yes.</p> <p>22 Q Okay. Are these the same bullet points</p> <p>23 that are in Bell Number 8?</p> <p>24 MR. OLSON: Objection; form.</p> <p>25 THE WITNESS: We have to get Bell Number 8</p>	<p>1 A On the letter itself.</p> <p>2 Q Would this document have been publically</p> <p>3 available back in 1999?</p> <p>4 MR. OLSON: Objection to form.</p> <p>5 THE WITNESS: Oh, yeah. This is page 4 --</p> <p>6 page 3 of a single cover sheet, so this entire --</p> <p>7 this document down at the bottom is one sheet, but</p> <p>8 it is in two or three articles, two or three</p> <p>9 comments.</p> <p>10 BY MR. TAKENOUCHI:</p> <p>11 Q And these are the kinds of articles and</p> <p>12 reports that you would make publically available?</p> <p>13 A Sure, I would prefer to do one subject at a</p> <p>14 time, but what we're talking about, losses and where</p> <p>15 we are headed as a result and removing flocks early</p> <p>16 as an alternative or possibility. So it's just a</p> <p>17 series of thoughts leading to solution of the first</p> <p>18 thought.</p> <p>19 MR. OLSON: Objection to form.</p> <p>20 BY MR. TAKENOUCHI:</p> <p>21 Q So referring to -- so with reference to</p> <p>22 Bell Number 29 here, this July 12th, 1999 --</p> <p>23 A That's what I'm looking at.</p> <p>24 Q Okay. At that point when you wrote this</p> <p>25 document, were you a contractor for UEP?</p>

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<p>1 A No. I don't think I became a contractor</p> <p>2 with UEP until 2001, did I? Isn't that right?</p> <p>3 Q Yes, it is.</p> <p>4 A Nobody is listening.</p> <p>5 Q We're listening.</p> <p>6 A There is a document here that says when I</p> <p>7 did become. I think it was 2001. That's when I</p> <p>8 retired, so it makes sense.</p> <p>9 Q Okay. So I just have one more line of</p> <p>10 questions here.</p> <p>11 MR. GODLSTEIN: Before you start, at some</p> <p>12 point I'm going to ask you for a time of testimony</p> <p>13 because I feel like we're starting to get close to</p> <p>14 our seven-hour mark, and at that point I want to be</p> <p>15 able to put an objection on the record.</p> <p>16 MR. TAKENOUCHI: Do a break and we'll get a</p> <p>17 count.</p> <p>18 MR. OLSON: Do we really need a break? Why</p> <p>19 don't we put the objection on now and he can finish.</p> <p>20 MR. TAKENOUCHI: We're just burning up</p> <p>21 time. Let's take a two-minute break.</p> <p>22 Let's go off record.</p> <p>23 THE VIDEOGRAPHER: The time is</p> <p>24 approximately 3:42 p.m. We're going off the record.</p> <p>25 (Recess.)</p>	<p>1 Q What would have happened if there hadn't</p> <p>2 been this phasing-in period for these cage space</p> <p>3 guidelines?</p> <p>4 MR. OLSON: Objection; form.</p> <p>5 THE WITNESS: Well, an example is you might</p> <p>6 get all the attorneys in the United States getting</p> <p>7 after the regulators and saying that you're going to</p> <p>8 put the whole business -- whole business out of</p> <p>9 business.</p> <p>10 There's an example of that when the United</p> <p>11 States Department of Agriculture came into</p> <p>12 de-populate chickens that had a disease. The</p> <p>13 Californians said wait a minute, you can't do that</p> <p>14 overnight and went to court and it stopped it. The</p> <p>15 USDA was stopped.</p> <p>16 And so then they said, well, we have to</p> <p>17 have more time to make these decisions and develop</p> <p>18 policy. That's what's going on here. You just</p> <p>19 don't make changes overnight with six-month-old</p> <p>20 bunch of birds, you don't kill six-month-old birds.</p> <p>21 So just from logistic standpoint, the</p> <p>22 transition period is very critical.</p> <p>23 BY MR. TAKENOUCHI:</p> <p>24 Q If there hadn't been that transition period</p> <p>25 for the cage space portion of the guidelines, what</p>
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<p>1 THE VIDEOGRAPHER: The time is</p> <p>2 approximately 3:44 p.m., and we're back on the</p> <p>3 record.</p> <p>4 BY MR. TAKENOUCHI:</p> <p>5 Q Mr. Bell, directing your attention to Bell</p> <p>6 Number 14, Bates number BELL-D-28020, if you look on</p> <p>7 the eighth page of this document, do you see at the</p> <p>8 bottom there it says, "The Europeans have" --</p> <p>9 A I'm trying to find the Number 8.</p> <p>10 Q The Bates numbers.</p> <p>11 A My page number, not yours. I got it.</p> <p>12 Go ahead.</p> <p>13 Q Do you see that bottom paragraph saying,</p> <p>14 "The Europeans have recognized"?</p> <p>15 A Yes.</p> <p>16 Q Okay. What were you saying in this</p> <p>17 paragraph?</p> <p>18 A Basically how long to implement the</p> <p>19 recommendations or requirements of the plan, the</p> <p>20 animal welfare plan.</p> <p>21 The Europeans recognized the need that you</p> <p>22 couldn't do it overnight, that it would take some</p> <p>23 time, and this is the application of that same</p> <p>24 principle to enacting these rules in the United</p> <p>25 States.</p>	<p>1 would the effect have been on egg prices?</p> <p>2 MR. OLSON: Object to form.</p> <p>3 THE WITNESS: Well, I don't think it would</p> <p>4 be enforceable to think that anybody could do it</p> <p>5 overnight. Transition can be as much as one day,</p> <p>6 one year, ten years, whatever.</p> <p>7 We know what this was requested here as far</p> <p>8 as transition period, but if it was a transition</p> <p>9 period of one year, it would have been a</p> <p>10 catastrophe.</p> <p>11 BY MR. TAKENOUCHI:</p> <p>12 Q And what would be the price effects of that</p> <p>13 catastrophe?</p> <p>14 A Probably you couldn't pay for the eggs, and</p> <p>15 then the market would be disrupted, eggs would not</p> <p>16 travel across the country.</p> <p>17 Price would escalate, the consumer would</p> <p>18 have to foot the bill, and then you might even have</p> <p>19 a shortage.</p> <p>20 You might have a shortage to the point that</p> <p>21 a supermarket chain might just run out of eggs,</p> <p>22 period, for a day or two, if there was no orderly</p> <p>23 transition.</p> <p>24 Q You can put that aside. I just have a</p> <p>25 couple final questions here.</p>

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<p>1 Mr. Bell, do you think the Scientific</p> <p>2 Advisory Committee was a sham designed to just</p> <p>3 rubber-stamp an effort by egg producers to inflate</p> <p>4 prices?</p> <p>5 A Absolutely not.</p> <p>6 MR. OLSON: Object to form.</p> <p>7 BY MR. TAKENOUCHI:</p> <p>8 Q Let me ask it again. Give him a second to</p> <p>9 object and you can answer.</p> <p>10 A Go ahead.</p> <p>11 Q Mr. Bell, do you think the Scientific</p> <p>12 Advisory Committee was just a sham to rubber-stamp</p> <p>13 an effort by egg producers to inflate prices?</p> <p>14 MR. OLSON: Objection to form.</p> <p>15 THE WITNESS: Now am I supposed to answer?</p> <p>16 I said "Absolutely not."</p> <p>17 BY MR. TAKENOUCHI:</p> <p>18 Q At any time while the committee was doing</p> <p>19 its work, did anyone ever tell you that the</p> <p>20 Scientific Advisory Committee was a sham designed to</p> <p>21 rubber-stamp a conspiracy to inflate egg prices?</p> <p>22 MR. OLSON: Objection to form.</p> <p>23 THE WITNESS: No.</p> <p>24 BY MR. TAKENOUCHI:</p> <p>25 Q Did any members of the Scientific Advisory</p>	<p>1 MR. GODLSTEIN: Don't just jump over Jason</p> <p>2 and answer. So pause before you answer.</p> <p>3 THE WITNESS: Well, I thought we were</p> <p>4 limited on time here.</p> <p>5 MR. GODLSTEIN: We're not limited on time,</p> <p>6 but everybody has to say something.</p> <p>7 THE WITNESS: That's fine, and I'll stay as</p> <p>8 long as I can. I thought people can't say what</p> <p>9 they're objecting to.</p> <p>10 MR. OLSON: He's asking you to take a brief</p> <p>11 pause after the question.</p> <p>12 BY MR. TAKENOUCHI:</p> <p>13 Q Mr. Bell, did you initiate any discussions</p> <p>14 during your service on the Scientific Advisory</p> <p>15 Committee where you had the goal of increasing egg</p> <p>16 prices?</p> <p>17 A I didn't have the role of increasing egg</p> <p>18 prices as a member of the committee.</p> <p>19 I'm able to separate -- I'm able to</p> <p>20 separate topics, and today we're going to talk about</p> <p>21 animal welfare and tomorrow I'm going to still be</p> <p>22 concerned about egg prices.</p> <p>23 Q That's all. I think there might be some on</p> <p>24 the phone who might have questions. Thank you.</p> <p>25 MR. MONICA: This is John Monica. We're</p>
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<p>1 Committee ever say that they felt their role was to</p> <p>2 help the industry suppress the supply of eggs and,</p> <p>3 thereby, increase egg prices?</p> <p>4 A No.</p> <p>5 MR. OLSON: Objection to form.</p> <p>6 BY MR. TAKENOUCHI:</p> <p>7 Q If the goal of the Scientific Advisory</p> <p>8 Committee had been to inflate egg prices, do you</p> <p>9 think the members of the Scientific Advisory</p> <p>10 Committee would have participated in the committee?</p> <p>11 A Not the specific members --</p> <p>12 MR. OLSON: Objection to form.</p> <p>13 THE WITNESS: The composition of the</p> <p>14 committee would be totally different. If the issue</p> <p>15 was health of the industry or economic health or</p> <p>16 what have you, this committee had its expertise in</p> <p>17 animal welfare, period.</p> <p>18 I was the only one that ever was concerned</p> <p>19 about the economics of what was going on or being</p> <p>20 recommended, but animal welfare was the driver in</p> <p>21 this committee.</p> <p>22 MR. GODLSTEIN: It is getting late in the</p> <p>23 day. Just try to remember Steig. Give him a minute</p> <p>24 after his question.</p> <p>25 THE WITNESS: How much longer?</p>	<p>1 not going to be asking questions. We've got an</p> <p>2 annoying fire alarm, so we're waiving it.</p> <p>3 THE WITNESS: I didn't think the topic was</p> <p>4 that hot.</p> <p>5 MR. TAKENOUCHI: Is there anyone else on</p> <p>6 the phone?</p> <p>7 Okay. I don't hear anything.</p> <p>8 THE WITNESS: Are they all together in one</p> <p>9 place?</p> <p>10 MR. OLSON: So for the sake of everyone,</p> <p>11 Mr. Bell, we don't have any pressing need for</p> <p>12 additional questions at this time.</p> <p>13 As we've discussed with Mr. Bell's counsel,</p> <p>14 documents are still being produced that we're going</p> <p>15 to review. We understand that we're going to be</p> <p>16 given the opportunity to come back for some</p> <p>17 additional time that we'll discuss with Mr. Bell's</p> <p>18 counsel.</p> <p>19 MR. GODLSTEIN: Correct.</p> <p>20 MR. OLSON: Thank you.</p> <p>21 THE VIDEOGRAPHER: This concludes today's</p> <p>22 video deposition of Don Bell, Volume II. The total</p> <p>23 number of media used was 3. The time is</p> <p>24 approximately 3:53 p.m., and we're off the record.</p> <p>25 (TIME NOTED: 3:53 p.m.)</p>

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